BSB CONSULTATION ON FUTURE TRAINING FOR THE BAR

RESPONSE ON BEHALF OF THE CHANCERY BAR ASSOCIATION

INTRODUCTION

1. This is the response of the Chancery Bar Association ("the ChBA") to the BSB's consultation on Future Training for the Bar.

2. The ChBA is one of the longest established Specialist Bar Associations and represents the interests of some 1200 members handling the full breadth of Chancery work, both in London and throughout the country. Membership of the Association is restricted to those barristers whose practice consists primarily of Chancery work. It is recognised by the Bar Council as a Specialist Bar Association.

3. The ChBA operates through a committee of some 17 members, covering all levels of seniority. It is also represented on the Bar Council and on various other bodies including the Chancery Division Court Users' Committee and various Bar Council committees.

4. This reply to the consultation by the BSB has been produced by a sub-committee consisting of William East (acting chair of the Junior Chancery Bar), Penelope Reed QC (Chair of the

Chancery Bar Association), Lyndsey de Mestre (Chair of the Academic Liaison Sub-Committee), Ruth Hughes and Joseph Curl.

5. Before turning to the specific questions raised, we wish to commence with our vision as to how training for the Bar could be dramatically improved. This involves substantial changes to the vocational and professional stages of training for the Bar. We will then go on to answer the individual questions posed by the BSB and indicate some solutions which we would advocate if the current consecutive three stage approach to training for the Bar is to be maintained.

6. We advocate training for the Bar which involves an academic stage which is similar to the present academic stage: a rigorous law degree (or postgraduate conversion course) with plenty of compulsory black letter law followed by a hybrid vocational and professional stage with a model similar that used for training accountants.

7. We consider that by combining a traditional learning of the law with a bold redesigned vocational and professional training, the BSB could vastly improve the training for pupils and create a regime which has the potential to attract a more diverse range of applicants whilst improving protection for consumers, thus promoting many of the BSB's regulatory objectives.

8. It is necessary for the BSB to act boldly in relation to the vocational stage of training. The Bar Professional Training Course is not fit for purpose. It is of limited benefit to students and of enormous cost which creates an unnecessary and undesirable bar to access to the profession. This situation should not be permitted to persist.

The Academic Stage

9. The Chancery Bar Association read with interest the proposed changes to the Academic Stage of training. It is plainly right that we examine, periodically, whether the existing system is delivering a quality system that is fit for purpose.

10. However we were concerned by what we perceived to be a suggestion that the academic stage should only be about making people fit for professional practice at the Bar. Those delivering the academic stage are not simply in the business of fitting out a limited number for pupillage and possible tenancy. Some law graduates go on to become solicitors and some do not go into the legal profession and use their legal knowledge and skills in other ways. In any event most who use their law degree or conversion course training in whatever field afterwards are generally expected to have acquired (i) a sound knowledge of what the law is, (ii) where to find it (iii) how to apply it, in a broad spectrum of areas. It seems to us that the way the academic stage is currently structured achieves that balance well.

11. We were also (even more) concerned by what we then perceived to be a point rather at odds with the point above, namely that it would be appropriate to move away from knowledge and understanding of the law itself, in favour of acquiring more generic skill sets. We found this suggestion alarming. In particular, what seems to be at the heart of the proposals is the idea that "it is hard to find concrete evidence that knowledge of most of the *required* subjects is any more essential than knowledge of many other subjects. These arrangements [the academic stage] tend to give prominence to the *acquisition* of knowledge rather than understanding of principles and concepts and the development of transferable intellectual and legal skills." (Future Bar Training para 61).

12. We think it is undeniable that most who approach lawyers for their skills want their lawyers to know what the law is. There is, accordingly nothing to shy away from in "acquiring knowledge". It seems to us a great underestimation of the broad range of skills required to undertake legal study with any degree of success, whether at degree level or as a conversion course, to suggest that it can simply be rote learned without absorbing an understanding of the principles behind it and the context underlying it. Moreover no successful teaching can take place without explaining those principles and contexts. We simply do not see how it makes sense that those matters should be in the spotlight and the acquisition of the law, which fits into that background understanding, should be abandoned, which is what appears to be the suggestion embodied in this section of the consultation.

13. Every law school produces a "skills matrix" as part of its quality assurance programme and is required to publish, and be monitored in respect of, specific learning and teaching outcomes for every substantive legal subject it offers – core or otherwise. Through these methods the teaching of law at the academic stage is already fully focused on developing transferrable intellectual and legal skills, the presentation and synthesis of arguments, etc.

14. As for the suggestion that "the list of required subjects contains things that some barristers may never use (for example trusts, crime) and does not contain other subjects which are of great importance" (Future Bar Training para 60), this seems to us worryingly misguided. Our experience is that, although not all areas are used in daily practice once a specialism is acquired, most barristers will find aspects of their practice touching upon areas that they do not routinely practice in from time to time (for example the criminal barrister who encounters offences against property or has to deal with proceeds of crime applications relating to property, the public lawyer who has to deal with a housing dispute, or the "purely" commercial barrister who has to work through a network of trusts to identify where assets are held, the family law specialist who has to do similarly, whilst also bumping up against crime in relation to the children of the family and so on). The fact that they may well have studied these areas during the academic stage of their practice will be enough to help them recognise the issues involved, sometimes to be able to advise with confidence, sometimes to enable them to refresh and research the point, sometimes to refer the matter elsewhere. But rarely does a case exist in so pure a form that knowledge and understanding of other areas is not of great assistance.

15. The reason why some subjects are “core” is because they provide knowledge of the basic principles of our legal system that cut across specialisms and because they require the acquisition of legal and transferable skills in order to be done properly (interpreting statute, reading cases, analysing facts, solving problems, understanding the social and economic contexts in which law operates, communicating the content of legal rules). We consider that the list of core subjects should not be reduced. We are strongly of the view that reducing the list of core subjects would be to water down the rigour of the academic stage. The authors of this consultation response are hard pressed to think of anything that we learnt in the compulsory subjects which has not be used occasionally in practice, and we are specialist Chancery barristers.

16. The Chancery Bar Association is open to the idea that there might be changes to the classification and content of “core” subjects (although of course this would require to be evidenced). However, in the absence of such evidence, there seems to us to be little wrong with the current academic stage of training as it stands and we do not agree with what appears to be the suggestion that it should be replaced with a less focused and more general study of the context of law and the soft skills lawyers need. Those things seem to us to be already deeply embedded in the study of law but only form the framework around it, rather than being the focus of the study itself.

17. On a practical level, we consider that it would be of very much assistance to add company law as a compulsory subject. We think this would be of help to all lawyers including those working in crime and family. Company law involves principles of corporate personality which are somewhat tricky to master and likely to be misunderstood.

18. We also consider that revenue law would be of assistance to all, but perhaps adding two further core subjects would prevent flexibility in teaching and learning which there should be room for in an undergraduate law degree.

19. An attempt to try to teach advocates justice and fairness is misplaced and a watering down of the black letter law content of law degrees is likely to water down public protection from incompetent barristers. There is some suggestion that a law degree should not be a memory test: but barristers need to know what the law is and some law is so basic that it must be known from memory so that it will come to mind when a barrister is in court on her feet.

20. Moreover watering down the amount of black letter law will be bad for diversity. Some universities will continue to teach the black letter law come hell or high water (Cambridge still teaches the black letter Roman law as a compulsory subject in Part 1A of the Tripos). If more traditional universities continue to teach black letter law and others do not then the students from less traditional universities will be at a significant disadvantage at interview for pupillage. That will have a negative effect on diversity. It may be necessary for many

Chancery sets to require a Master's degree specialising in a relevant area before a student can begin pupillage. We understand this occurs in some tax sets already. That will also be bad for diversity. It is necessary for pupils to arrive at Chancery sets with a good knowledge of black letter law or else the beginning of their pupillage will be useless.

21. Our vision of academic training for the bar is largely as it currently stands, because it works well. We advocate the addition of a further compulsory subject (company law) and we counsel against the watering down of the academic stage.

The Vocational Stage

22. This is an area of training which in our view needs to be completely overhauled. It is not currently fit for purpose. It does not prepare students well for pupillage. The course is outrageously expensive. Liberalisation of the market has been a failure. Competition has not driven down cost and prices are inflated because of the large amount of liquidity put into the market by scholarships. There is a significant transfer of value from the Inns, pupillage providers and students to the providers. Some value goes the other way but not much save for a ticket to be permitted to be called to the bar.

23. Worse than that, there is a massive oversupply of students with dreams (some unrealistic) of a career at the Bar. The risk for students and the cost is a toxic cocktail which churns out

dissatisfied and impecunious students year after year, even if they do manage to obtain pupillage. It is a situation the profession ought to be ashamed of.

24. We do not say that the BPTC is totally redundant. Indeed some of the teaching of advocacy is quite good (although not as good as the Inns' advocacy tuition or the Keble course). It is useful for students to learn civil procedure and ethics and to try their hand at conference, negotiation, mediation, opinion writing and drafting. However, this training should not take a year and cost over £15,000.

25. We consider that the BCAT should be beefed up, so that it represents a real aptitude test for the Bar in the way that the big City firms and the Government Legal Service test their recruits. We propose that pupillage and the BPTC thereafter be combined so that it is a necessary prerequisite for entry on the course that a person has a pupillage. The bar training course would thus be similar to the accountancy profession where there is a longer period of pupillage with mandatory periods of study leave taken and exams passed (say) at 9 months to give provisional practising status and at (say) 18 months to entitle a pupil to become a fully-fledged tenant and undertake advocacy on their own behalf.

26. This would allow the BPTC providers to teach opinion writing and pleadings at the same time at which a pupil sees how their supervisor does it. It would also allow a student to watch her pupil supervisor in Court, in conference and in negotiation before trying their hand at these

skills and to improve by observing over the course of the pupillage. It is our view that a great deal more can be learnt from watching for example a conference than the BPTC can teach about client handling skills with no real clients to hand. It will also allow pupils to engage with ethical problems as they really arise.

27. Our proposed new course will also prevent a significant over supply of pupils. This will "de risk" the course for students. This should mean that good students are not dissuaded from applying to the Bar. It is our experience that many academic institutions put off good students from applying to the Bar because of the cost and the difficulty in obtaining pupillage thereafter. It may also mean that the cost of the course drops or is picked up substantially by pupillage providers. That might be difficult for the publically funded Bar, but scholarships from the Inns could also be better targeted at those who have a likelihood of becoming barristers but cannot themselves or via their chosen chambers cover the costs of the course.

The Professional Stage

28. While in general this stage works, it needs some alteration in order to permit the improvement required in the vocational stage. Our vision sees a longer professional stage with release time for study. There is no reason why pupillage providers could not release pupils so that they can go to college. Times for attendance at college would have to be

planned far in advance and time would need to be made to prepare for college and this would need to be respected by chambers. There is no reason why that could not happen.

29. The new structure would mean that tests in for example advocacy, opinion writing and drafting would take place throughout or at the end of the professional stage such that the standard would be set by the BSB and not by individual chambers. This would mean that:

    a. Pupil supervisors could not be said to be "marking their own homework";

    b. Pupil supervisors would have a modicum less power over their pupils;

    c. Pupils would all be judged at the same level by an external examiner such that the BSB could be satisfied that the pupil was fully trained prior to a pupil being given a full practising certificate at the end of pupillage.

30. Having set out our general vision, we will now proceed to answer the individual questions under each part of the consultation.

PART 1: ACADEMIC STAGE

QA1 – does possession of a lower second class degree provide good evidence that an individual possesses the intellectual abilities that are consistent with those described in the draft Professional Statement?

31. A lower 2nd class degree (as opposed to an upper second class degree) does not provide any clear evidence either way about the candidate's possession of the intellectual abilities listed in the draft Professional Statement. If the question is whether a 2:2 should be the minimum standard for entry to the profession or whether that should be raised to a 2:1 our answer is that there is a bottle neck in the existing vocational training stage and this would potentially ease it. However, it is plain that there can be many reasons why a candidate might achieve a 2:2 rather than a 2:1 and yet be a very able candidate. It seems to us on balance that the 2:2 limit should remain and that it should be a matter for individual chambers to decide whether or not they will hear from candidates with degrees below any particular standard of their choosing.

QA2a & b– If an individual does not hold a degree, or the degree that they hold was not passed at the required level, are there alternative means by which these abilities can be demonstrated. If so, how?

32. A degree remains the most appropriate way to ensure a level playing field. Attempting to evaluate qualities and skills which may not be referable to one another introduces the potential for great unfairness.

QA3 – are there other issues in relation to intellectual abilities and degree classification…which we have failed to identify?

33. Please see the opening to this response and our comments in general on the academic stage.

QA4 – do you agree that "knowledge and understanding of the basic concepts and principles of public and private law within an institutional, social, theoretical and transnational context" provides an essential foundation for the legal knowledge and understanding that our draft Professional Statement requires? Please tell us why or why not.

34. It does not seem to us that this is the key to legal study as seems to be suggested. It is one rather nebulous and unclear way of defining some of the underpinnings of legal study, but is only the beginning – the study of law must aim at the acquisition of knowledge of what the law actually is. Please see above for our comments on the importance of the core subjects and their study on the academic course..

QA5: Assuming you agree with the formulation in para 83, which of the above ways (a to e) do you think we should use to make sure that those seeking to be barristers and completing the academic stage have sufficient legal knowledge and understanding to progress towards full qualification as a barrister? Please explain the reason why you have chosen these.

35. We do not agree that the formulation at para 83 is clear or workable. Taking from it what we can, we do not agree that it is necessarily the cornerstone for legal study, nor is it what the study of law should aim for. To the extent that this question asks how best to try to ensure whether potential barristers are equipped with sufficient legal knowledge and understanding (which does seem to us to be a relevant question, but not sure why it has to

be anchored to the formulation at para 83), (a) seems to be the most sensible. It is, in fact, most like what already exists at the academic stage.

QA6: Would your answer be different if a student had taken a non-law degree plus a GDL?

36. No.

QA7: Are there other ways of doing this that we have not identified?

37. (To the extent that (a) is meant to represent something other than the existing approach to the academic stage) we think that the present academic stage works well, and is rigorous and there should be maintenance of the status quo (subject to regular review of teaching standards and relevance and content of individual subjects over time).

PART 2: VOCATIONAL STAGE

The purpose of vocational training

QV1: Do you agree that some form of vocational training is needed to bridge the gap between an academic stage and a professional stage?

38. If by *"bridge the gap"* the question intends to ask whether or not we agree that any vocational stage must be a separate, consecutive, stage between the academic stage and the professional stage, then we do not agree. While we agree that some form of vocational training is necessary, this should be accommodated concurrently with a reformed pupillage, as set out in detail above.

QV2: Do you think the features of the changing legal services market which we have identified are the ones which have the main impact on vocational training for barristers?

39. The areas identified appear to cover the biggest changes in the legal services market. But we do not agree that these factors should automatically drive the training of advocates. We would be concerned if the training of the key professional skill of advocacy was diluted or side-tracked by reason of teaching skills unrelated to advocacy. For example, at paragraph 125(j) of the consultation, reference is made to the conduct of litigation by barristers. It would not be a positive development if vocational training designed specifically for barristers was changed to focus on non-advocacy skills associated with conducting proceedings, such as how to issue proceedings, writing letters or running a legal office. The focus must be on excellence in advocacy. For those interested in other activities, such skills can be developed

by means of additional post-qualification training, which should not be compulsory for all. Matters like *"commercial awareness"*, *"marketing skills"* and compliance with VAT (paragraph 128) are not appropriate things to teach at the vocational training stage for barristers and can be delivered more effectively in other ways. Above all, we do not agree that the answer to an oversupply of lawyers in a changing legal market is a race to the bottom or attempting to compete with solicitors for the same work.

QV3: Are there any other features of the legal services market now and in the future which you think will have an impact on vocational training for barristers?

40. None known currently.

Meeting the requirements of the (draft) Professional Statement: issues with the structure, content and delivery, and the "student experience" of the current BPTC.

QV4: Are the above issues in connection with BCAT and admissions to the BPTC correctly identified?

41. Generally yes. We seriously doubt, however, that the cost of the BCAT *"may be putting off good students"* (paragraph 137) who would otherwise be prepared to undertake the BPTC, in light of the relatively low cost of the BCAT (£150) when compared with the shamefully high cost of the BPTC (over £18,000). (This comment should not be taken as an indication that we consider that the BCAT represents good value for money.)

QV5: Are there any other issues connected to the BCAT and admission to vocational training that you think the BSB as a regulator should be seeking to address when thinking about the future of vocational training for barristers?

42. Two further issues:

(1) The BCAT has proved ineffective to do what it set out to do. In the report of the Working Group conducting the *Review of the Bar Vocational Course*, which was published in July 2008, it was commented that the student body includes some who *"would never obtain pupillage, however many pupillages were available."* The BCAT was intended to address this and nothing we have seen suggests it has been effective in doing so.

(2) Too many people are admitted to vocational training. It is all very well to say (as it is said at paragraph 110) that candidates are warned about the risks compared with the prospects of success, but it is unfair to expect 22 year olds to weigh this information effectively against the inherent appeal of becoming a barrister and the marketing activity of the commercially self-interested BPTC providers. Those least likely to succeed at the Bar are those most likely to have the worst judgment on risk. In our view, the current position is immoral and it is no answer to say people are warned.

QV6: Are the above issues in connection with content, structure and delivery of the BPTC correctly identified?

43. Yes.

QV7: Are there any other issues connected to content, structure and delivery of the BPTC that you think the BSB as a regulator should be seeking to address when thinking about the future of vocational training for barristers?

44. No.

Demonstrating the requirements of the (draft) Professional Statement have been met: issues with quality assurance of the current BPTC and assessment of outcomes.

QV8: Are the above issues in connection with quality assurance and assessment of the BPTC correctly identified?

45. Yes.

QV9: Are there any other issues connected to quality assurance and assessment of the BPTC that you think the BSB as a regulator should be seeking to address when thinking about the future of vocational training for barristers?

46. Close attention should be paid to the comparative performance of different providers in terms of the numbers of those passing the BPTC who go on to secure pupillage. Those numbers should be widely publicised.

Affordability: the cost of the current BPTC

QV10: Are the above issues in connection with the cost and affordability of the BPTC correctly identified?

47. Yes. Other than the lack of pupillages on offer, we consider that the key impediment to increased equality and diversity at the Bar is the cost of the BPTC.

QV11: Are there any other issues connected to the cost and affordability of the BPTC that you think the BSB as a regulator should be seeking to address when thinking about the future of vocational training for barristers?

48. Yes. A further issue is whether a stand-alone training course is the best way to deliver the vocational stage of training. We address this in detail above.

49. We would also make the following observations on the strengths and weaknesses identified under the heading ***Summary analysis of the current system for vocational training*** at the foot of page 36:

(1) ***"Strengths"***: we note that the first two of the three so-called *"strengths"* identified for the current system do not reflect benefits to any of (a) the public at large; (b) consumers of legal services in particular; or (c) students. Instead, these purported *"strengths"* represent the vested interests and priorities of those who provide the BPTC for private gain and those who regulate it.

(2) As for the third *"strength"* identified, this proceeds by way of assumption, not argument. We have seen no evidence that the BPTC *"engages well"* with the prior academic stage of legal education. Is there any such evidence?

(3) ***"Weaknesses"***: the third *"weakness"* identified proceeds on the assumption that the *"knowledge and skills acquired in the course"* have a *"wider value"*. We are not sure that this assumption is warranted, or that such a *"wider value"* is either desirable in general or relevant to the utility of the BPTC. A lack of recognition of wider value should not be surprising, given that the BPTC is specifically designed to train barristers, rather than for some auxiliary or general purpose. If a BPTC graduate is unable to secure pupillage, it should not necessarily be a criticism of a course designed to prepare candidates for pupillage that such a course is not much use for doing other things. It would be quite wrong to respond to the shortage of pupillages by redesigning the vocational stage of training with a view to making it more useful to those who do not obtain pupillages.

(4) We find it surprising that the prohibitively high cost of undertaking the BPTC is not identified as a weakness. As noted at the outset, we consider the current system to be scandalous in this respect.

Exploring future approaches to vocational training

QV12. Do you agree with this analysis of the advantages and disadvantages of this approach? Are there any specific points you disagree with?

50. No. We disagree with the premise that the current arrangements are fit for purpose. We would reiterate the points we make immediately above in respect of the *"strengths"* and *"weaknesses"* identified on page 36 of the consultation in respect of the current system.

QV13: Are there any other advantages or disadvantages of this approach that you can discern?

51. Yes: please see answers to QV11, QV12 and QV14.

QV14: Are there any equality impacts of this approach that you are aware of?

52. As noted above, in our view the extremely high cost of the current arrangements, the need to invest in the costs of the BPTC before knowing whether or not pupillage will be obtained, and the massive oversupply of pupillage-ready applicants, have a very significant equality impact.

QV15. Do you agree with this analysis of the advantages and disadvantages of this approach? Are there any specific points you disagree with?

53. This proposal is put at such a high level of abstraction that it is difficult to engage with the advantages and disadvantages.

54. However, allowing such a laissez-faire system will probably result in a race to the bottom, and so for the time being, we would counsel against such a system.

55. In respect of so-called *"advantage"* (b), and as noted above, we strongly resist any suggestion that the vocational stage of training for barristers should be redesigned with any view to making it more useful to who do not become barristers. This must be a totally irrelevant consideration.

QV16: Are there any other advantages or disadvantages of this approach that you can discern?

56. As noted at QV15, we can see a race to the bottom in such a stripped-down system.

QV17: Are there any equality impacts of this approach that you are aware of?

57. None specific to this system.

QV18. Do you agree with this analysis of the advantages and disadvantages of this approach? Are there any specific points you disagree with?

58. We consider the advantages to be reasonably accurate. In particular, the system would allow for students to de-risk and reduce their outlay. This proposal is partly consistent with our proposed model outlined above, insofar as it has a centralised, challenging, knowledge-based threshold exam at the outset, capable of being undertaken at limited cost.

59. We disagree with certain of the weaknesses:

    (1) As to weakness (a), we would be surprised if a "gold standard" emerged if all candidates sat the same, centrally standardised, knowledge-based exam. If the exam was sufficiently challenging to be worthwhile (and we would urge that this should be so – not another BCAT!), then the fact of having passed the exam would be a

sufficient "gold standard" to indicate the candidate's ability. We understand this to be the position in the United States, where the system works in a similar way. Put simply, if you pass, then it means you are a good candidate without more.

(2) As to weakness (b), we do not see how this could be so: there will always be barriers to entry for new commercial providers, and the barriers to entry associated with this model must be less than any other model that could be conceived. Again, in the United States, we understand that the market in commercial provision of study materials is vibrant and diverse, anything from successful ex-students selling bound copies of their revision notes on Ebay, right up to commercially run fully face-to-face lecture courses.

(3) As to weakness (c), it is difficult to see how the diversity position could be worse than it is under the current system. Is it really suggested that the regulator is currently able to influence the diversity of candidates coming forward to any meaningful extent, given the cost and the risk to those without private means?

(4) We do not understand the logical basis of weakness (d): if the prior training is a threshold, knowledge-based exam, then advocacy does not come into it: surely the advocacy training happens once the candidate has gone through the preliminary exam – have we misunderstood the proposal?

(5) We do not understand what weakness (e) is intended to mean.

(6) As to weakness (f), we consider that the required scale of operations is likely to be achieved, given the numbers currently sitting the full BPTC. We do not see how cost

effectiveness can be a rational objection to this model given the total lack of cost effectiveness in the current arrangements.

QV19: Are there any other advantages or disadvantages of this approach that you can discern?

60. The key potential disadvantage is that the threshold knowledge-based exam is not made sufficiently challenging to be worthwhile, rather like what happened with the much-heralded BCAT. That would be in nobody's interests, much like the BCAT has proved to be. It needs to be tough and a real measure of ability, to provide a genuine guide to those recruiting for pupillage and to prevent people at the very beginning of their career squandering a vast sum of money on a qualification that proves to be useless if pupillage is not obtained, such as is the case with the BPTC.

QV20: Are there any equality impacts of this approach that you are aware of?

61. If done effectively (in accordance with the model outlined by us elsewhere in this response), we think that the equality impacts are likely to be positive.

QV21: From the three approaches outlined above, do you have a preference and if so, why?

62. We favour aspects of the third approach, in particular the preliminary knowledge-based exam. But we think that the subsequent vocational stage should be undertaken concurrently with pupillage, as set out in detail elsewhere.

QV22: Have you identified any other approach we might reasonably adopt in respect of vocational training for barristers and which would satisfy our aims and regulatory and statutory obligations as set out earlier in the consultation? If so, please briefly outline that approach.

63. We set our proposal out in detail above in our preamble.

PART 3: PUPILLAGE

64. The Chancery Bar Association believes that pupillage remains an absolutely essential part of the training that new barristers undertake. It represents an intense period of learning which, in our view, currently delivers a substantially greater contribution to the skills and attributes of new entrants to the profession than the costly BPTC. Yet whilst training on the BPTC is provided by teachers who are paid to do so, the training in pupillage is provided by practitioners who give up a substantial amount of their own time to do so with little being received by them directly in return. We can see that there may be a case in some areas (described below) for enhanced regulation of the pupillage system, but we believe that any desire for further regulation ought to be balanced against the risk that this will impose more of a burden on chambers and particularly individual pupil supervisors, in the context of a system that largely works well at the present time.

65. We respond to the individual sections of this part of the consultation paper below, using the same sub-headings for convenience.

Recruitment and selection of pupils and access to pupillage

QP1: Have we correctly identified the issues relating to recruitment and selection and access to pupillages?

66. Yes. We would add the following comments:

(1) In relation to paragraph 242, we agree that one reason why BPTC performance plays a less significant role in selection than previous academic attainment is because many candidates will not have completed the BPTC at the time at which they apply to chambers. However, the more fundamental reason is that chambers at the Chancery Bar do not generally take the view that the BPTC is a good test of whether a candidate has the right attributes to undertake a career at the Chancery Bar. The view taken at the Chancery Bar of the BPTC as a course is a broadly negative one (as we set out above), whereas the academic stage is regarded as being a genuine test of a candidate's skills.

(2) Regarding paragraph 246, we are not aware of examples of the 'exploding' offer mentioned there. However, we do think there is a case for further imposition of timetables for making offers and/or enforcement of existing rules on timetables to ensure that candidates have the ability to choose between different chambers without worrying about turning down an offer they already have.

(3) In relation to paragraph 253, we would point out that chambers in areas of Chancery work which are not normally regarded as commercial also on occasion offer very high pupillage awards.

(4) In relation to paragraph 254, whilst we appreciate the concern regarding the difficulties experienced at the publicly-funded Bar by pupils given the low level of pupillage awards, we do not think that the high awards made in commercial and Chancery areas of practice pose an issue. If anything, the 'arms race' in which chambers have engaged in these practice areas in relation to pupillage awards presents benefits to the public by attracting

highly-skilled entrants to the profession who might otherwise be attracted to joining a firm of city solicitors.

QP2: Are there other issues which the regulator should take into account when thinking about recruitment and selection and access to pupillage?

67. Access to pupillage depends on there being a cadre of pupil supervisors available to train pupils. As stated above, the regulatory regime operated by the BSB should not be so onerous as to put off potential supervisors from undertaking this role. Chambers often find it difficult enough as it is to find people to do this, given the significant time commitment involved.

Structure of pupillage and the quality of the pupil experience

QP3: Have we correctly identified the issues relating to the structure of pupillage and the quality of experience for the pupil?

68. As stated above, we see a real case for the integration of pupillage and the vocational stage of training. This is considered briefly in paragraph 258, but not in any real depth.

69. However, as regards the system as it currently operates, we think that this section does consider the correct issues. Again we comment as follows on specific paragraphs:

(1) Paragraph 257 – we are not convinced that a part-time pupillage would be realistic at the Chancery Bar. Pupillage is a highly intensive period of learning, especially at sets where the pupil needs to obtain specialist knowledge that has not previously been learnt

at the academic stage or on the BPTC (often the case at the Chancery Bar). It would be difficult to obtain this knowledge if pupillage was undertaken on a part-time basis.

(2) We agree wholeheartedly with the second sentence of paragraph 260.

(3) In relation to paragraphs 263 and 264, we consider that the standard of training provided at the Chancery Bar during pupillage is generally very high, as is the mentoring and support provided. Perhaps the best way of addressing any perceived issues would be for there to be a requirement on chambers to set out in a written pupillage programme document what is expected of pupils and what support/redress mechanisms exist should they have issues, in addition to information being provided on external redress mechanisms. At the moment pupils are not always provided with a great deal of information as the consultation recognises.

(4) Paragraph 265 is couched in quite negative terms. We consider that the relationship between pupils and supervisors is often highly positive and assists not only in terms of training the pupil during the pupillage year, but also in providing the pupil with a mentor on an ongoing basis as he/she continues in practice.

Meeting the required standards in pupillage

QP5: Have we correctly identified the issues relating to meeting the required standards in pupillage?

70. We are not convinced about the content of paragraphs 274 and 275. Chambers have a real interest in ensuring that the pupils who are given tenancy are more than fit to practise, since

this will otherwise impact heavily on the reputation of chambers as a whole. Hence we are not that concerned by the idea of supervisors 'marking their own homework'.

71. Having said that, our idea of combining the vocational and professional stages would address any concern in relation to this by allowing the decision as to fitness to practise being partly assessed by means of vocational exams taken at the end of the pupillage period (see above).

72. As to paragraph 276, the highly specialist nature of the Chancery Bar means that it is inevitable that the training provided to some pupils will be more narrowly focused than at chambers where a wide range of specialisms is practised. The reason the pupillage system works well now is because supervisors can allow pupils to be immersed in the work which they are currently doing, which both gives pupils a 'real world' training and also minimises the amount of time that supervisors have to devote to thinking up training tasks for the pupil to do. It would not be realistic to require supervisors or chambers to train pupils in areas which go beyond their specialisms.

73. We share the concern that pupils at Chancery sets may currently have less of a chance to put into practice advocacy skills in the second six months of pupillage (paragraphs 277-278). The same applies to the early part of their career after pupillage. Many chambers do provide in-house advocacy training which can (at least in part) make up for this, but some do not. The BSB might want to consider whether further such provision could be encouraged. The problem is perhaps less marked than it seems because a junior Chancery practitioner will

often earn enough to invest in courses such as the Keble Advocacy Course, which provides further advanced advocacy training to new tenants.

74. Our proposed combination of the vocational and professional stages would, we think, improve pupils' training in advocacy as it would allow them to learn by watching and doing at the same time, rather than 'doing' for one year on the BPTC (without any real world examples of cases) and then 'watching' during pupillage, often with a significant gap in between the two periods of training (because the person concerned has not been able to secure a pupillage which starts immediately after the end of the BPTC).

QP6: Are there other issues which the regulator should take into account when thinking about meeting the required standards in pupillage?

75. No.

The regulator's role: striking the right balance?

QP7: Have we correctly identified the issues relating to the regulator's role in pupillage?

76. Yes, largely. However, we take the view that although the checklist system is not perfect, it does perform the function of making sure that the supervisor and pupil have regard to the points which ought to be covered during pupillage. Fitness to practise could be assessed externally by the BSB at the end of pupillage if our proposals for the combination of the vocational and professional stage were adopted.

QP8: Are there other issues which the regulator should take into account when thinking about the regulator's role in pupillage?

77. No.

QP9: Are there any other issues not raised in the categories above which we have failed to identify in relation to current arrangements for pupillage?

78. No.

Future approaches and what the BSB wants to address

QP10: Do you agree with this fundamental position regarding work-based training as a pre-requisite for authorisation?

79. Yes we do. See our comments above at the top of this section.

QP11: Do you agree that pupillage should be more flexible in its content, with the BSB taking a more generally permissive approach to the sorts of activities that might constitute appropriate content, as long as the requirements of the Professional Statement could be demonstrated as being met?

80. It is difficult to answer this question without sight of the final version of the Professional Statement. The same applies to other questions in the consultation which reference the Professional Statement.

81. Regarding external training generally, we consider that there is a good case for all or the vast majority of pupillage to take place within chambers (save obviously for vocational training if our proposals for the combination of the vocational and professional stage were adopted).

There is room for further development of skills after receipt of tenancy by means, for example, of spending time on secondment with professional clients. This is something which many new tenants do at Chancery sets. The risk of allowing this to take place during pupillage would be that some chambers might be tempted to offer such arrangements to professional clients for commercial gain, when this might not necessarily be the best thing for the pupil's development. Once a pupil is taken on, he/she has more bargaining power and therefore the ability to make a judgment call on whether a period in secondment would be useful or not.

QP12: What are the risks, if any, associated with this?

82. See above.

Role of the Professional Statement

QP13: We have consulted separately on the Professional Statement and you may or may not have responded to that consultation. If you have not, do you agree that the Professional Statement should be used to define the knowledge, skills and attributes to be demonstrated at the end of pupillage?

(If you have responded to the Professional Statement consultation, please feel free to re-state or vary your position on this question here.)

83. We have responded separately to the Professional Statement consultation.

Regulatory focus on the PTO and pupil supervisor

QP14: Do you agree with the principle of the rebalancing of responsibility for pupillage as between the "entity" (chambers or otherwise) and the individual pupil supervisor? Why/why not?

84. We agree that greater regulation of individual supervisors would be undesirable. We support the rebalancing of responsibility as suggested if there is to be further regulation, but we would urge caution in the level of any additional regulation imposed, since the people dealing with this within PTOs will often be committees of individual barristers who give up their time voluntarily in the same way as the supervisors do (and indeed may also be supervisors themselves). We would reserve comment on whether the regulatory changes mooted in paragraph 307 are desirable or not until we see specific proposals, save that we take the view that a pupillage programme document which sets out how the pupil will be trained, what is expected of him/ her, matters such as how the tenancy decision will be made, and what support/ redress mechanisms can be accessed might well be useful.

QP15: Do you think there should be more systematic initial validation of PTOs and supervisors?

85. This is unlikely to have much impact on the Chancery Bar where the identity of pupillage providers is relatively static. However, in our view it does make sense to have some investigation into whether any new pupillage providers are competent. The consultation paper does not really suggest what this would involve, and we would therefore reserve our position on the point until more specific proposals are formulated. The consultation paper already acknowledges the need to consider whether any enhanced regulation will act as a disincentive to new pupillages being provided.

QP16: Do you think there should be periodic re-validation of PTOs and supervisors?

86. Again it is not really suggested in the consultation paper what this would involve, but such a proposal is likely to increase the time and cost associated with running pupillage schemes within chambers and for individual supervisors. Our experience is that the current pupillage system is largely fit for purpose at the Chancery Bar and provides an extremely effective mode of training. Our view is therefore that any periodic re-validation should only take place at relatively long intervals (say 5 years) and should not be too burdensome. The appropriateness of pupillage arrangements within a PTO, for example, could be judged by reference to whether there is a pupillage programme document in place which adequately sets out how pupils' training is achieved and which secures their fair treatment during the pupillage year.

87. We think that re-validation of individual supervisors is undesirable, given the additional time involved.

QP17: Do you think there are benefits in a published list of approved PTOs and supervisors?

88. A published list of approved PTOs might have benefits for pupillage applicants. We are not convinced as to the benefit of a published list of approved supervisors.

Exploring future approaches to pupillage

Approach 1: Continuous improvement of the current arrangements

QP18: Do you agree with this analysis of the advantages and disadvantages of this approach? Are there any specific points you disagree with?

89. We agree with the overall approach, on the basis that the current system largely works well (although we of course consider that the current system could be modified to allow the vocational stage to be combined with the professional stage, but with the professional stage otherwise having broadly the same shape, see above). The proposal for a pupillage programme document contained in paragraph 322 is welcomed. We feel that the document might also contain details of how the tenancy decision is to be made, since the provision of such information is important to the pupil being treated fairly and would have a positive equality impact. We support the idea of the regulator producing a standard document to guide PTOs as this will reduce the time involved in putting such a document together.

90. We would comment on the envisaged disadvantages of this approach as follows (the same paragraph lettering is used for easy reference):

(a) We do not agree. A requirement to put together pupillage programme document would focus chambers' minds on how adequate training of pupils should be achieved and also give pupils a valuable resource of information about their rights and how their training will be advanced.

(b) We are not clear that further flexibility is necessary. As stated above, we do not consider that further flexibility as to external training is desirable.

(c) We consider that there is the possibility for rebalancing within this approach if desired, for example by putting more emphasis on PTOs rather than individual supervisors to put

in place effective arrangements, something which is often done in practice given that most pupils at the Chancery Bar have a number of supervisors each year.

(d) We disagree – effective outcomes can still be achieved via this method.

(e) Again, we disagree. The provision of a programme document as suggested by the regulator would provide pupils with a clear statement of their rights, including support mechanisms, internal redress systems and information about external redress.

(f) We are not clear that it would be, but if it does, then in circumstances in which the current system works well this factor ought to be of more importance.

QP19: Are there any other advantages or disadvantages to this approach?

91. No.

QP20: Are there any equality impacts of this approach that you are aware of?

92. The provision of adequate information about what pupillage will involve, what is expected of a pupil, how tenancy decisions are made and what redress and support mechanisms exist would be a welcome step towards ensuring fair treatment.

Approach 2: Approval of any pupillage schemes proposed by PTOs that demonstrate the achievement of the standards set out in the Professional Statement

QP21: Do you agree with this analysis of the advantages and disadvantages of this approach? Are there any specific points you disagree with?

93. We disagree with the advantages identified. The approach would result in increased costs across the board and seeks to fix a system which is not fundamentally broken. We agree with the disadvantages identified.

QP22: Are there any other advantages or disadvantages to this approach?

94. No.

QP23: Are there any equality impacts of this approach that you are aware of?

95. No.

Approach 3: Authorisation of candidates on the basis of their own evidence of having met the requirements of the Professional Statement; with possible final independent external assessment

QP24: Do you agree with this analysis of the advantages and disadvantages of this approach? Are there any specific points you disagree with?

96. We do not agree with the advantages identified: (a) we do not see the need for further flexibility at this time, (b) this could be met via the waiver provisions and (c) we are not convinced this would unlock further demand and it would be accompanied by new risks to the public in circumstances in which the existing system has been proven to produce competent and effective practitioners. We agree with all of the disadvantages identified and in particular disadvantage (c).

QP25: Are there any other advantages or disadvantages to this approach?

97. No.

QP26: Are there any equality impacts of this approach that you are aware of?

98. See disadvantages (d) and (e).

QP27: From the three approaches outlined above, do you have a preference and if so, why?

99. We consider that the first approach of broadly maintaining the current system but with scope for improvement would be best. See our reasons above. This must however be read in the context of our recommendation that the pupillage period be combined with the vocational stage.

QP28: have you identified any other approach we might reasonably adopt in respect of professional, work-based training for barristers and which would satisfy our aims and regulatory and statutory obligations as set out earlier in the consultation? If so, please briefly outline that approach.

100. No.

30 October 2015