BSB 2016 Consultation Paper on the Future of Training for the Bar:

Future Routes to Authorisation

Response on behalf of the Chancery Bar Association

January 2017

INTRODUCTION

1. This is the response of the Chancery Bar Association to the BSB's latest consultation paper published in October 2016 (**"2016 Consultation Paper"**). We submitted a previous written response dated 30 October 2015 (**"2015 Response"**) to the BSB's earlier consultation paper on Future Training for the Bar published in 2015 (**"2015 Consultation Paper"**). The proposal for reform that we advanced in the 2015 Response has been misrepresented in the 2016 Consultation Paper. Paragraphs 118 and 119 of the 2016 Consultation Paper suggest that we favoured a *"Managed Pathways"* (i.e. Option B) approach. Paragraph 118 of the 2016 Consultation Paper goes as far as to describe our proposal as *"Option B(iii)"* and says that *"this option was championed by the Chancery Bar Association"*. This misunderstands our proposal.

2. Our proposal was not intended as one of multiple *"Managed Pathways"* and we do not support Option B. The proposal in the 2015 Response was put forward as a way in which the route to qualification as a barrister could be reformed. It was not presented as one of *"a number of different training pathways alongside each other"* (as Option B is described at page 6 of the 2016 Consultation Paper). We take the view that it is undesirable to have multiple routes to qualification at the Bar. It is apparent from comments made on behalf of the BSB at the meeting of the Bar Council on Saturday 23 January 2017 that the BSB is committed to the principle of a number of *"managed pathways"* – essentially some form of Option B – whatever is said to it. We would urge the BSB to listen to the profession and think again. There are serious disadvantages to the simultaneous approval of multiple pathways. We oppose the principle of simultaneous approval of multiple pathways.

3. In our view, Option B is the worst of Options A, B and C set out in the 2016 Consultation Paper. We believe that Option B will:

    a. have negative consequences for equality and diversity;

    b. confuse consumers;

c. be bad for the cohesion of the profession; and

d. be administratively unworkable for individual chambers.

4. In the 2015 Response, we set out a bold vision of how training for the Bar could be dramatically improved. We recognise that this vision did not attract wide support from other stakeholders who responded to the 2015 Consultation Paper. Having carefully considered all the responses to the 2015 Consultation Paper, as well as the proposals set out in the 2016 Consultation Paper, it is the view of the Chancery Bar Association that the proposal supported by the Council of the Inns of Court (**"COIC"**) and the Bar Council contained in the Addendum dated 1 December 2016 to the 2016 Consultation Paper (**"COIC/Bar Council Proposal"**) should be adopted. The COIC/Bar Council Proposal contains the most plausible and efficient proposal we have seen to address the most troubling feature of Bar training, which is the unacceptably high level of upfront cost and risk to which candidates are exposed. This is by far the biggest equality and diversity issue for Bar training.

THE CHANCERY BAR ASSOCIATION

5. The ChBA is one of the longest established Specialist Bar Associations and represents the interests of some 1300 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.

6. 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.

7. This reply to the consultation by the BSB has been produced by a sub-committee consisting of Amanda Tipples QC (Chair of the Chancery Bar Association), Andrew Twigger QC (Chair of the Consultations Sub-Committee), William East, Ruth Hughes, Rosanna Foskett and Joseph Curl.

RESPONSE TO THE 2016 CONSULTATION PAPER

Question 1

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

8. We agree.

Question 2

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

9. We agree, subject to the following.

10. Paragraph 39 of the 2016 Consultation Paper refers to the BSB's proposal to replace the current mandatory foundation law modules with a general requirement that a law degree should encompass certain characteristics contained in a new statement. That new statement is just twenty-three words long. We note that the characteristics in that short statement are expressed at a very high level of generality. In this respect, we would re-emphasise the point we made at paragraph 20 of the 2015 Response:

> *"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."*

11. We are concerned that the BSB may underestimate the real hazards for equality and diversity that are present in any proposal to water-down the mandatory content requirements of a qualifying law degree. If content is largely deregulated, then the reality is that at least *someone* (probably Oxbridge and others primarily in the Russell Group) will continue to offer an academically rigorous training in the law. There will certainly be a market for it. The candidates who have the best academic credentials and presentational polish immediately post-sixth form will be best equipped to get onto such courses. Those firms and chambers at the top of the legal services market will prefer their trainees and pupils to have had that kind of training, because they will take the view that those who have had it will be better lawyers. The rigorous training will become the gold standard. This is a recipe for (a) increased barriers to access; and (b) equality and diversity regression.

12. This concern (the *"gold standard"* problem) is an overarching one that extends to all aspects of the approach to Bar training apparently favoured by the BSB in the 2016 Consultation Paper. It is a theme to which we will return several times in the course of what follows.

Question 3

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

13. We agree. In particular, we are pleased to see that there is evidence showing an association between good performance on the BCAT and good performance on the BPTC. This removes the principal objection to taking steps to address the massive oversupply of BPTC graduates, which has historically been the proposition that degree performance is such a poor indicator of success on the BPTC that there is no fair or reliable way of identifying weak candidates in advance of their undertaking the course. Now there is.

OPTION A

Question 4

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

14. We agree. Option A (which is essentially the current system) is demonstrably capable of training barristers for practice in accordance with the requirements of the Professional Statement. This is evident from the fact that it has been doing so for many years.

15. Having said that, Option A (like the current system) is sub-optimal because of the upfront cost and risk to which candidates are exposed, i.e. the need to commit to the prohibitively expensive BPTC with only a limited prospect of pupillage owing to oversupply of BPTC graduates.

16. Furthermore, Option A is economically inefficient for the same reason that the present system is inefficient: it redistributes value to the private training providers and produces a massive oversupply of BPTC graduates. We addressed this in the 2015 Response:

> *"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.*

> *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."* (paras.22-23, 2015 Response)

17. If Option A could be combined with a higher BCAT pass mark (which would need to be set at a sufficiently high level to reduce the numbers on the BPTC), then Option A would be an acceptable way forward, although it would not address the problem of upfront cost and risk. The COIC/Bar Council Proposal remains our preferred option, because it tackles the problem of upfront cost and risk head-on.

18. We were concerned to see the following remark at paragraph 76 of the 2016 Consultation Paper:

> *"There is, of course, debate as to the effectiveness of a discrete final period of training when knowledge acquisition takes place in advance of students being able to embed learning through practice."*

19. This remark discloses a misunderstanding of what pupillage is. It is wrong to suggest that pupillage takes place before *"students"* (sic) are *"able to embed learning through practice"*. In fact, a second-six pupil barrister may appear in court unled, and undertake written work, in exactly the same way as any other barrister. While such a pupil barrister remains under the supervision of her or his pupil supervisor, the pupil operates independently in court (i.e. their supervisor does not go with them). That pupil barrister's practice has begun, and they are able to embed learning by practice, well in advance of the end of pupillage. Even where the pupil barrister does not act as advocate themselves, they will often have had a hand in the preparation of documents (such as pleadings or skeleton arguments) that are used by their pupil supervisor in court. The pupil barrister will see how such documents are received by the court in practice. Again, that is *"embed*[ding] *learning through practice."* It is important to appreciate that pupillage is not merely *"work experience"* or anything like it; pupillage is much more important than that.

Question 5

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

20. We are unable to agree with these points. The points made here are unreasoned, unsupported by evidence, and proceed by assertion. For example, at paragraph 77 of the 2016 Consultation Paper it is said that:

> *"the present system is too inflexible by being so strictly sequential and costly as a result, restricting access to the profession."*

21. Is there any evidence that cost is a *"result"* of the present system being *"strictly sequential"*? Is there any evidence linking the sequential nature of training with *"restricting access to the profession"*? These claims do not appear to be supported by evidence or reasoning.

22. We agree that access to the profession is restricted. But we have not seen anything to support the assertion that this is a consequence of the sequential nature of the present system of training. In our view, the principal restrictions on entry to the profession are upfront cost and risk, i.e. the need to commit to the prohibitively expensive BPTC with only a limited prospect of pupillage owing to oversupply of BPTC graduates. This is by far the biggest equality and diversity issue for Bar training.

Question 6

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

23. We agree, subject to repeating our comments in respect of the unsupported remark about *"shortcomings in access to the profession"* contained in paragraph 81, which apparently refers back to paragraph 77 of the 2016 Consultation Paper, which we have addressed at paragraph 21 above.

Question 7

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

24. In our view, ethics was best taught integrated with other subject-matter modules, as was the case under the old BVC. We would add that ethics ought to underpin every aspect of training for the Bar.

Question 8

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

25. We do not agree.

26. Based on the way the market has developed over the last twenty years and the way that the providers have behaved during that time, we consider that it might be unduly optimistic to believe that cost increases in one area (such as strengthened centralised assessments) will be offset against savings in other areas (removal of prescription), as is suggested in paragraph 94 of the 2016 Consultation Paper.

27. Comments about public funding in paragraph 98 of the 2016 Consultation Paper are entirely speculative. We have not seen any evidence or reasoning to support the assertion that Option A *"…is least likely to provide opportunities to draw on developments in public funding."* Moreover, public funding opportunities are extremely vulnerable to sudden policy adjustments by central Government, which are difficult to predict and beyond the control of the BSB.

28. Scholarships, which are discussed at paragraph 99 of the 2016 Consultation Paper, represent valuable and worthwhile support for those who would otherwise be unable to contemplate the costs of the BPTC. But they represent an inefficient transfer of value from the Inns to the BPTC providers, and almost certainly an inflationary one, as we said at paragraph 22 of the 2015 Response and repeated at paragraph 16 above. The key problem with the present system would persist under Option A, which is upfront cost and risk, as a consequence of the need to commit to the prohibitively expensive BPTC with only a limited prospect of pupillage owing to oversupply of BPTC graduates.

Question 9

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

29. We agree.

Question 10

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

30. In our view, the key impediment to access to the Bar is upfront cost and risk, i.e. the need to commit to the prohibitively expensive BPTC with only a limited prospect of pupillage owing to oversupply of BPTC graduates. This is the biggest equality and diversity issue that the Bar faces. The COIC/Bar Council Proposal goes furthest to address this issue.

31. As noted at paragraphs 21 and 22 above, we disagree with the BSB's apparent assumption that a standardised sequential training model is, in and of itself, bad for equality and diversity. We have seen no reasoning or evidence for this, whether in the 2016 Consultation Paper or elsewhere. In our view, Option B is likely to be far worse than Option A for equality and diversity. We prefer Option A to Option B for this reason, but favour the COIC/Bar Council Proposal over either of them.

OPTION B

32. As stated at paragraph 3 above, we do not consider Option B to be suitable. The suggestion that we are in favour of Option B, as set out at paragraphs 118 and 119 of the 2016 Consultation Paper, is not correct. We have never given any indication of support for Option B or support for multiple different *"pathways"* to qualification for the Bar. In our view, Option B is by far the worst of Option A, B and C set out in the 2016 Consultation Paper. We are opposed to the principle of multiple pathways and support the COIC/Bar Council Proposal.

Question 11

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

Question 12

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

Question 13

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

33. We disagree with the propositions at questions 11, 12 and 13, which we address together. In our view, Option B is incapable of meeting any of the requirements identified in questions 11, 12 and 13.

34. As noted above at paragraph 11 in respect of the academic stage of training, if content is deregulated, a gold standard is likely to emerge. This concern is hugely amplified by Option B, which would see a revolutionary approach to training and a whole range of different routes to obtain a practising certificate given authorisation. Such an approach would not be capable of meeting the standardised requirements set out in questions 11, 12 and 13 because the different routes would be incommensurable with each other and unmanageable.

35. Anecdotal evidence suggests that those from non-traditional backgrounds find the existing (standardised) system intimidating in its complexity. We fear that a proliferation of routes will add to this complexity. This will favour (a) those with Bar connections able to demystify the system; and/or (b) those fortunate enough to attend the sorts of schools that enjoy well-resourced and well-informed careers centres.

36. Small chambers already find it difficult to fund and/or administer pupillage. The kind of fundamental change that is proposed in Option B to the existing system is unlikely to be manageable for any but the biggest and wealthiest sets. Ironically, we suspect that the biggest and wealthiest sets are the likeliest to want to stick to a gold standard resembling the existing pupillage model. Smaller sets do not have the administrative resources or personnel to deal with the complexity that would be inherent in multiple routes to qualification. Under the present system, those who administer and carry out pupillage training are themselves self-employed barristers who carry out training functions without remuneration alongside their other activities. Their motive in doing so is largely born of an unselfish sense of obligation to the profession, in that the advantages of training new barristers are, at most, of only long-term benefit to the chambers in which a particular pupil trains, and of no measurable benefit to any individual barrister.

37. There is, therefore, a risk that smaller sets will simply withdraw from training. This would be an undesirable development and (we would have thought) ought to be strongly contrary to the BSB's objectives. We are concerned that some of the comments in the 2016 Consultation Paper might be read as if the BSB is in favour of, or at least not positively averse to, this development. The danger of chambers withdrawing from pupillage has been identified at paragraphs 129, 138 and 159 of the 2016 Consultation Paper (*"Some may argue that by*

changing the system, the number of places being offered will be reduced"; *"Some argue that…they will simply cease to make offers of pupillage"*), but no solution is proposed beyond a generalised comment that *"more organisations"* may choose *"to offer work-based learning in innovative ways"*. The sole example that is offered of such *"more orgnisations"* (at paragraph 138) is the Government Legal Service (**"GLS"**). Yet the GLS is not, and never will be, in any position to provide real-life advocacy training without assistance. The training currently delivered in-house by the GLS to its pupil barristers is office-based and similar to that undertaken by its trainee solicitors. It is not the same as chambers-based training alongside independent advocates. This proposition is proved by the fact that GLS pupil barristers currently spend a significant proportion of their training in external chambers; this is what differentiates the training given to GLS pupil barristers from the training given to GLS trainee solicitors. Here is an extract from the current GLS guidance notes for prospective pupils:

> *"Your pupillage will last 12 months and your time will be split between the GLS department you have been allocated to and a set of external barristers' chambers.*
>
> *…*
>
> *There are fewer opportunities for barristers to engage in oral advocacy in the GLS…GLS legal teams use the services of external counsel for most of their court work. Candidates wishing to focus principally on an advocacy career should bear this in mind."*[1]

38. Plainly, the vast majority of people who aspire to be barristers hold that aspiration because they want to be advocates. Those who would like to be lawyers but do not find advocacy appealing choose to become solicitors. It is not obvious how the GLS could ever be in a position to take up any slack in the training of barristers left as a consequence of reduced chambers-based opportunities: the GLS itself is currently only able to train advocates at all because it has access to external chambers who are prepared to take its pupils for part of their training. The only possible answer is that the BSB proposes that *"work-based learning"* under a *"Managed Pathways"* regime may be authorised from providers who are unable to offer real-life advocacy experience and that such reformed *"work-based learning"* will take a different form from the kind of training provided by chambers. In our view, any move away from *"work-based learning"* that is firmly anchored in the real-life practice of advocacy would be undesirable. We take this view because experience shows that formal teaching of advocacy can only be effective to a fairly rudimentary level. It is a skill that can only be

[1] https://www.gov.uk/guidance/government-legal-service-gls-legal-trainee-scheme-how-to-apply#pupillage-structure

acquired beyond a basic standard by watching excellent advocates performing under pressure from excellent judges, and by doing it oneself again and again under real-life conditions.

39. Following on from this, we note the general emphasis placed in the 2016 Consultation Paper (for example at paragraphs 121 and 126) on the interests of Government departments, HMRC and others who may wish to employ barristers, and the further emphasis on training in an employed context at paragraphs 151 and 152. It is troubling that there is far more specific attention paid to the employed than the self-employed Bar in the 2016 Consultation Paper. This misses the crucial point that the Bar is primarily an independent referral profession specialising in excellence in advocacy, the vast majority of whose practising members have always been self-employed. Barristers are attractive employees because of the quality and strength of the Bar's reputation in its primary role, which is to perform advocacy to a high standard of excellence. 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. If this is not the BSB's intention, then caution should be exercised before embarking on any reform that might lead significant numbers of new barristers to receive the *"work-based learning"* element of their training away from the self-employed, chambers-based, independent Bar. 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.

40. We were concerned to see the following comment at paragraph 129 of the 2016 Consultation Paper:

> *"We recognise that many chambers have limited capacity for developing their own bespoke solutions, and rely upon the traditional structure for a variety of reasons. We, therefore, will leave the design and delivery of work-based learning to the approved training providers."*

41. Any further encroachment by private providers into Bar training would be undesirable in our view. In particular, it would be no answer to a lack of enthusiasm on the part of the independent Bar in the design and delivery of modular work-based learning to hand matters over to private providers. 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. But, more fundamentally, without buy-in from

the profession on a significant scale, opportunities to practise at the independent Bar upon qualification (i.e. tenancy opportunities) for those who have followed new and unfamiliar *"pathways"* may well be limited. If this happened, it could lead to a two-tier Bar, or a second class Bar, which would be bad for access to the profession, bad for professional cohesion and bad for equality and diversity. It would also be confusing for consumers, who could no longer be sure that a *"barrister"* was someone who had trained as an independent advocate within a referral-based profession.

Question 14

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

42. It is not clear from paragraphs 141 to 144 of the 2016 Consultation Paper what position is being put forward as a the BSB's *"view"* in this respect. Paragraph 142 puts forward one (albeit not very clear) proposal (*"providers will be empowered to deploy greater flexibility in their own approach"*) and refers back to paragraph 85; whereas paragraph 143 puts forward another (completely different) proposal (*"we think there is…a case for continued assessment of ethics by way of a discrete centralised examination"*). No conclusion is reached and no *"view"* is put forward. It is not apparent what the BSB proposes should happen if Option B is adopted.

43. In our view, the incoherence of the *"view"* put forward here (one that is impossible to identify and thus impossible to agree or disagree with) is indicative of the unworkability of Option B as a whole.

Question 15

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

44. We do not agree.

45. In our view, the points made here could be unduly optimistic. The suggestion at paragraph 148 that *"we expect that the BSB's active approval of new and innovative pathways (that potentially offer lower cost routes to qualification) will introduce new price competition in the market"* is an unlikely one, given the behaviour of the private training providers since the market was liberalised some years ago. No *"market"* worthy of the name has developed; the various providers increase prices each year in virtual lockstep with each other. Once again,

the BSB's view is based on assertion rather than any real evidence. The only evidence put forward is the fact that Northumbria University charges £9,000 per year in tuition fees for its combined MLaw programme. In our view, no relevant guidance can be derived from the experience of the MLaw at Northumbria: that qualification is offered by Northumbria University to undergraduates alongside its other undergraduate programmes. The fact that the tuition fees are £9,000 per year is plainly a consequence of the cap imposed by central Government on undergraduate fees. It is not a figure that has been determined in a self-interested deregulated market, as would be the case with new training offered under a *"Managed Pathways"* regime. The centralised £9,000 cap is in any event vulnerable to future policy adjustments by central Government, over which the BSB has no control.

46. Again, there is a focus in the BSB's analysis on employed practice rather than the Bar as an independent referral profession. We repeat what we said at paragraphs 37 to 39 above. Those who wish to become barristers do so because they want to be independent advocates, not employed quasi-solicitors. Talk of *"salaries"* at paragraph 152 is of tenuous relevance in a consultation addressed to the future of a profession where the vast majority of its members are self-employed. Most practising barristers have never received a salary since receiving their call to the Bar.

Question 16

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

47. We do not agree.

48. Once again, we note the emphasis that is placed on *"employment skills"* (paragraph 153) and *"financial incentive*[s] *for employers"* (paragraph 154). The 2016 Consultation Paper again focuses on the interests of employers and omits any discussion of the Bar as a self-employed referral profession (which is what it is).

49. There remains a gold standard problem: if there is a proliferation of training with differing content, then certain courses or *"pathways"* will be more attractive to certain chambers than others. We repeat what we said at paragraph 11, 12, 34 and 36 above.

50. The comments about Government support or funding in paragraphs 153 and 154 are expressed at such a high level of generality that they can amount to no more than

unsupported speculation. In any event, these factors are highly exposed to future policy adjustments by central Government.

Question 17

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

51. We agree that Option B is fraught with risk and uncertainty. In our view, there is nothing in the 2016 Consultation Paper (either in the section headed *"Impacts on the market"* at paragraphs 155 to 162 or elsewhere) to indicate that the risk and uncertainty has been adequately addressed.

52. We agree in particular with the recognition at paragraph 155 that the BSB is *"unable to predict what will happen*" if Option B is adopted. We also agree that the gold standard problem (identified at paragraph 158 of the 2016 Consultation Paper) is a significant risk and repeat what we have said about it in other contexts at paragraphs 11, 12, 34, 36 and 49 above.

53. The 2016 Consultation Paper also identifies several other risks, with which we agree, including the possibility that training will become more London centric (paragraph 157) and the danger that the number of pupillages will reduce (paragraph 159). As we noted at paragraph 37 above, the possibility that chambers will be less willing to provide *"work-based learning"* (i.e. pupillage or something resembling it) under a *"Managed Pathways"* regime is identified several times in the 2016 Consultation Paper at paragraphs 129, 138 and 159. In our view, this is a very real possibility if Option B is pursued. Yet no strategy to deal with this risk (other than speculation that the employed sector, such as the GLS, will take up the strain: see paragraphs 37 and 38 above) is put forward. This is deeply troubling.

54. We are concerned that the BSB has undertaken no analysis of ways in which the market risk issues that have been identified at paragraphs 155 to 162 (and elsewhere) in the 2016 Consultation Paper could be managed or ameliorated. The proposed way forward set out at paragraph 162 of the 2016 Consultation Paper is expressed at a very high level of generality in just twenty words:

> *"We think that these risks must be considered and managed prior to authorising new any* [sic] *routes or new training providers."*

55. In our view, this is an inadequate basis on which Option B might be adopted and the associated risks assumed.

56. We are concerned that the BSB appears to be committed to Option B without having undertaken any real analysis of the risks and consequences of such far-reaching reform. In our view, it would be irresponsible to embark on Option B in these circumstances.

Question 18

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

57. We do not agree.

58. We disagree with the proposition set out in paragraph 163 that Option B *"provides the greatest potential to increase access to the profession"* from currently unrepresented groups. Again, the BSB's position is advanced by assertion and is unsupported by any evidence and only the barest reasoning. It cannot be regarded as more than speculation.

59. Once again, heavy emphasis is placed on the interests of employers: paragraph 166 refers to an *"apprentice-type route"* that will *"enable employers to take greater control over many aspects of their apprentices' training, ensuring they have the requisite experience."* This overlooks the fact that the Bar is a referral profession comprised of self-employed independent advocates. We repeat what we said at paragraphs 37 to 39 above. Who are the employers that the BSB believes are equipped to train advocates in any numbers? We have shown at paragraph 37 above that the GLS is not so equipped. No other candidates are put forward. Where is the evidence to suggest that barristers trained by such (unidentified) employers will be equivalent to those trained in chambers? Why does the BSB believe that if employers are able to *"take greater control over many aspects of their apprentices' training"* then this will (apparently in and of itself) *"ensur*[e]*"* that those apprentices *"have the requisite experience"*? There is no obvious relationship between the premise and the conclusion. Until this is all worked out, it cannot amount to more than speculation.

60. Furthermore, it should not be overlooked that the current standard route for training at the Bar is already *"an apprenticeship-type route"*. That is what pupillage is. As noted at paragraph 19 above, we would emphasise that pupillage is not merely *"work experience"* or anything like it.

OPTION C

Question 19

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

Question 20

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

Question 21

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

Question 22

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

61. We agree that Option C is *capable* of meeting the criteria identified at questions 19 to 22 inclusive.

62. In our view, however, Option C is inefficient and undesirable because of the large element of duplication between the academic stage (i.e. qualifying law degree or GDL) and the proposed BEE.

63. We believe that the COIC/Bar Council Proposal is a superior proposal, because it does not contain unnecessary duplication and removes the need to devise a complicated new exam completely from scratch.

Question 23

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

64. We agree. One of the key attractions of the COIC/Bar Council Proposal is that the proposed Part One examination is derived from existing assessments that form part of the BPTC and as such does not require a complicated new exam to be reinvented at great expense. It is, accordingly, a far superior proposal to Option C.

Question 24

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

65. We agree.

Question 25

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

66. We agree that having a standardised exam is likely to be a *"leveller"* from an equality and diversity point of view. Upfront cost and risk would be reduced. In our view this would be a positive development. As noted elsewhere, the COIC/Bar Council Proposal is a better way of doing this than Option C because it avoids the unnecessary duplication and costly reinvention of the wheel inherent in Option C.

67. We agree with the comment at paragraph 195 of the 2016 Consultation Paper that the equality impacts of any change should be monitored, although we would disagree (if it is to be suggested) that this is something particular to Option C: in our view, equality impacts should be monitored whatever reform (or if no reform) is adopted.

Question 26

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

68. If the choice was restricted to Options A, B and C, then we would favour Option A because it is the least bad. Option B is by far the worst and should not be pursued. Option C has considerable attraction for the reasons set out at paragraph 66 above, but it is rendered unsuitable by the need to devise a complex and entirely new examination entirely from scratch.

COIC/BAR COUNCIL PROPOSAL

69. As stated above, the Chancery Bar Association favours the COIC/Bar Council Proposal. The proposal takes the best elements of Option A (essentially the current system) and Option C (a standardised exam that candidates may prepare for in any way they wish). It has a significant advantage over Option A, in that it reduces upfront cost and risk. It has a significant advantage

over Option C, in that it does not duplicate elements of the academic stage or require a new exam to be developed from scratch at considerable expense.

70. The COIC/Bar Council Proposal simply separates the BPTC into two components: those aspects capable of assessment by a written exam (Part One); and those aspects that are skills-based (Part Two).

71. We apply the various criteria used in the 2016 Consultation Paper in respect of Options A, B and C to the COIC/Bar Council Proposal as follows:

Does the COIC/Bar Council Proposal meet the requirements of the Professional Statement/regulatory objectives, access to the profession, supporting the rule of law and promoting the interests of consumers/the LSB's statutory guidance?

72. In our view, the COIC/Bar Council Proposals will meet all these requirements. We take this view because the COIC/Bar Council Proposal has the same content as the existing BPTC/pupillage regime, which meets all these requirements.

Does the COIC/Bar Council Proposal reduce cost?

73. The COIC/Bar Council Proposal is certain to reduce the amount of upfront cost that any given student must find. Instead of signing up to the entire cost of the BPTC, the student commits only to the Part One examination. The student may prepare for that exam however they choose. Once the Part One exam has been passed, the student may then review their performance, compare it against the performance of others, and take an informed view about their prospects of success in obtaining pupillage. Candidates who then undertake Part Two will do so as part of a cohort far smaller in number but far greater in ability than the Part One cohort, with a better idea of their aptitude for the Bar, as well as far better odds of successfully obtaining pupillage.

What are the higher education implications of the COIC/Bar Council Proposal?

74. These implications are limited, because Part One and Part Two would together equate to the BPTC. The way that Part One (alone) would interface with other higher education awards would need to be considered, but we do not consider that this would be problematic.

What are the equality and diversity implications of the COIC/Bar Council Proposal?

75. In our view, the biggest attraction of the COIC/Bar Council Proposal is that it will make a candidate's decision to embark on the BPTC less risky, because there will be no need to sign up to the whole BPTC and pay the huge fees upfront. Instead, a candidate need only commit

to Part One, at the fraction of the cost. As noted at paragraph 73 above, once Part One has been passed or failed, the candidate may take an informed view about what to do next.

76. The gold standard problem is eliminated, because Part One will be centrally examined and marked. There will be one standardised qualification and everyone will know exactly what it is worth. All stakeholders will be able to compare like with like. Although those with means will be best placed to prepare themselves for Part One (by purchasing the best tuition or being able to afford to take time off from remunerated work or other commitments to dedicate to study), this applies to all aspects of education in every field and it is not easy to see how it might be uniquely capable of being overcome at the Bar. The real benefit is that everyone studies for and sits the same Part One examination. Part One will itself be the gold standard and to acquire a pass in it will be a useful exercise in professional development even for those who do not ultimately go on to sit Part Two.

77. We note that two alternative approaches are set out at paragraph 21 of the Addendum containing the COIC/Bar Council Proposal: firstly, that all BPTC students should take and pass Part One before progressing to Part Two; secondly that students could choose instead to take an *"integrated"* course if they preferred. In our view, the first option is preferable. One of the key attractions of Part One is that it performs a sifting function, ensuring that only those candidates capable of passing Part One progress to Part Two. If those with the financial means to commit upfront to the *"integrated course"* were permitted to do so, it would allow such candidates to short-circuit the Part One sifting function solely on the basis of ability to pay. The danger would be that there would develop separate tracks for rich and poor. This would be inconsistent with improving access to the profession and with equality and diversity objectives. We realise that those who disagree with this view will point to the MLaw at Northumbria as an example of a worthy innovation that would be precluded by our position, but for the reasons we gave at paragraph 45 above, that course is artificially inexpensive because it is offered by a university alongside its other undergraduate courses and takes its lead from the centrally-imposed fee cap. An *"integrated course"* run on true market lines by self-interested commercial providers would resemble the unacceptably expensive BPTC and we would be no further on.

26 January 2017