



## **YOUNG LEGAL AID LAWYERS**

### **Response to the Bar Standards Board Consultation on the Future Training of the Bar: Future Routes to Authorisation**

**30 January 2017**

#### **About Young Legal Aid Lawyers**

1. Young Legal Aid Lawyers (YLAL) was formed in 2005 and has almost 3,000 members. We are a group of lawyers committed to practising in those areas of law, both criminal and civil, which have traditionally been publicly funded. YLAL's members include students, paralegals, trainee solicitors, pupil barristers and qualified junior lawyers based throughout England and Wales. We believe that the provision of good quality publicly funded legal help is essential to protecting the interests of the vulnerable in society and upholding the rule of law.
2. This is our response to the Bar Standards Board (BSB) Consultation on the Future Training of the Bar: Future Routes to Authorisation and to the Addendum to the BSB's Consultation paper "The Future of Training for the Bar: Future Routes to Authorisation".
3. YLAL responded to the earlier BSB Consultation on the Future Training of the Bar: Academic, Vocational and Professional Stages of Training in October 2015. Our response to that consultation is appended to this response.

#### **Introduction**

4. The consultation poses a number of questions. We have responded to all questions posed in Part II of the consultation. We have responded to question 26 of Part III. We have provided comments on the proposal put forward by the Bar Council and Council for the Inns of Court (COIC), which is contained in the Addendum consultation paper.

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

*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.*

5. YLAL agrees that the Inns continue to make a valuable contribution to professional principles. The training and advocacy opportunities the Inns provide to students can be valuable.
6. However, much of traditional system of call to the bar is extremely archaic. Required attendance at dinners provides no function beyond tradition and, moreover, runs counter to the fundamental principles that the BSB seeks to uphold both generally and

within this consultation, such as accessibility and affordability. The dinners present a financial barrier to those of low means and, YLAL notes, that although some Inns' scholarships cover the cost of these, not all scholarships are means-tested. In addition, the antiquated traditions that form part of the call to the bar process can be extremely off-putting for applicants to the bar from non-traditional backgrounds and therefore work against social mobility.

7. YLAL is therefore unable to see how the BSB can consult in principle on the retention of the Inns' role in calling individuals to bar, without simultaneously consulting on the requirements imposed by the Inns in discharging that function. We note that paragraph 35 of the consultation states that such a consultation will take place in a separate, later review. YLAL consider the separation of these reviews to be artificial.
8. YLAL proposes that the BSB should not take any position on the answer to this question until a decision is taken as to what requirements should rightly form part of being called to the bar. The retention of the Inns as the gatekeepers to call should only occur if the requirements they impose are overhauled to ensure that they cease to present barriers to social mobility.

*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. In principle YLAL agrees that candidates for the Bar should demonstrate "graduate attributes". However, by limiting this in principle to the traditional model of obtaining a degree prior to practice, attempts to move away from the traditional "evolutionary" approach will be undermined.
10. YLAL believes that there are a number of ways that individuals may reach a stage of having the necessary graduate attributes, whether through study for a degree, through studying a combined academic and vocational course from a provider with degree awarding powers, or through prior work experience. In order to achieve this flexibility – a key objective of this consultation – the development of vocational courses from providers with degree awarding powers must be fully considered prior to any new training system being instituted. In addition, any waiver system for individuals seeking a waiver from degree requirements must be well advertised and accessible to candidates from non-traditional educational backgrounds.

*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.*

11. We refer to our concerns outlined in response to question 2.
12. We note the BSB's comments in paragraph 43 and would agree that degree classification provides very little indicator of suitability for the profession. Given the far greater relevance of an individual's results in the Bar Course Aptitude Test (BCAT), or in a potential Bar Entrance Exam, YLALs believe that the BSB's regulatory attentions are far better focussed on these elements of training than on regulating via the means of degree classification.

*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.*

13. Since its inception, YLAL has remained very concerned about social mobility within the legal profession. Students are currently leaving university with ever increasing debts after their undergraduate degree. The BSB should be doing everything it can to reduce

training costs and to ensure that future barristers come from the widest possible pool within society. An effective training scheme would encourage and support the entry of young, talented people to the Bar. Instead, the excessive course fees of the Bar Professional Training Course (the BPTC) risk deterring people on low incomes from pursuing a career as a barrister. Not only is this socially and morally unacceptable, it damages the profession as a whole. It acts as a barrier to ensuring that the profession is truly representative of the public whom the profession is designed to serve and misses out on the recruitment of talented advocates.

14. The BPTC also encourages many people to spend vast sums of money and/or go into further debt only for them to be unsuccessful in passing the course or finding a pupillage. This benefits only the private course providers. Part of this problem is acknowledged by the BSB: how to ensure that those who begin training have a realistic prospect of obtaining pupillage. Where profit-motivated private providers remain the decision maker as to who accesses the BPTC, this is not done effectively. The BCAT is a step in the right direction. YLAL raises this issue because, when redesigning the training regime, if the BSB has any interest in accessibility and social mobility, as expressly stated in the consultation objectives, future bar training needs to be designed so that the stages of training are both cost-effective, and able to screen for likely success at the earliest possible moment, before substantial costs have been incurred.
15. We therefore welcome the BSB's recognition that the *status quo* is not an option. On the contrary, we believe that radical change to the training regime for young barristers is necessary to the training regime to ensure that social mobility within the profession can be improved. Whilst YLAL is open-minded as to how this could be achieved, we are clear that that no proposed model is acceptable if it does not significantly reduce the cost of qualifying as a barrister and better reflect the limited number of pupillages available.
16. We cannot support Option A because it suggests the continuation of the twelve-month BPTC course run by private providers for excessive fees. This does not address our concerns about the financial burden on students and, therefore, is not properly accessible to people from disadvantaged backgrounds.
17. Whilst we have not been provided with the proposed costs for Option B, we observe that it appears to leave too much autonomy to individual private course providers with minimal intervention from the BSB. This provides too much potential for excessive fees to once again form part of training, including the significant regulatory cost of managing different qualification pathways, which is likely to be handed on to bar students. We are also concerned that it leaves open the possibility of a hierarchy of different models, where some are viewed as more prestigious by pupillage providers. Having a certain model which is perceived to be more likely to lead to pupillage risks a rise in demand which will allow the provider to significantly increase course fees.
18. In respect of Option C, YLAL considers that this is disproportionately disruptive because it requires a total redesign of both the academic and vocational studies required to become a barrister, without necessarily tackling the problems about which we are most concerned (outlined above). There are several institutions at present which provide high quality law degrees and law conversion courses in different formats to suit the needs of different students. It is also the case that, although tuition fees for a law degree have tripled in recent years, student loans are available for an undergraduate law degree in the same way as for any other undergraduate degree. In

respect of the Graduate Diploma in Law (“GDL”), there are several part-time courses so that students can earn and study at the same time. We also note that, although far from cheap, the cost of the standard one-year GDL programme is typically around half that of the BPTC. It follows that the focus of any proposal should be reforming the BPTC, not academic legal courses.

19. Further, it is not desirable to oblige students at the very start of their legal studies, at a time when they have little academic or practical experience of the law, to decide whether they want to be a barrister or solicitor. More generally, we are deeply concerned by the lack of detail provided in respect of Option C which, to be effective, requires significant cooperation from universities. In particular, we are sceptical that universities with strong law departments and good reputations will be interested in providing this qualification alongside their existing law courses.
20. As previously stated, YLAL remains open-minded about any new training regime and require further details about, in particular, the anticipated costs for students of each model. However, of the options which we have been asked to consider, we believe that the COIC proposal comes the closest to meeting our criteria (see further below). In particular, introducing a knowledge assessment which can be self-taught should significantly reduce course fees. Importantly, however, this has not been confirmed and YLAL would also require reassurance that the fees for the second part of the course would be kept as low as possible without compromising quality, It would also mean that those who did not pass this assessment would not have to continue, wasting further money and time on a pursuit which is clearly inappropriate for them. We therefore consider that the COIC proposal merits detailed and serious consideration. It is disappointing that this was not included in the original BSB consultation because, whilst not perfect, it is the most sensible attempt at solving the current problems.
21. YLAL will continue to make the case for cost-effective training of a high standard which encourages people of all social backgrounds to pursue a career at the Bar, whilst also providing a realistic measure for those who will find obtaining pupillage very difficult. Given the significant problems with the current BPTC model, we believe that brave, ambitious reform is required to ensure that the best people are given the opportunity the join the profession.

#### **Comment on the proposal put forward by COIC**

22. Although the COIC proposal could be improved to promote social mobility further, YLAL generally considers that it is preferable to the other three options (Options A, B and C) set out in the BSB’s consultation. The reasons for this are outlined below.
23. First, YLAL considers that the COIC Proposal has the potential to reduce the cost of training to become a barrister. Significant weight should be attached to this advantage given that the exorbitant cost of the BPTC currently amounts to a major barrier to the profession for those from disadvantaged backgrounds. In particular, by separating the “knowledge” part of the qualification from the “skills”, there is real potential to reduce the cost of the qualification. This is because the “knowledge” element can be taught online and/or self-taught. Clearly, it is considerably less expensive for students to access this kind of training as opposed to obliging them to attend a course which requires a significant amount of contact time in relatively small classes. However, YLAL notes that there is a lack of transparency regarding the proposed costs of this arrangement and that a reduction in cost is not inevitable. YLAL therefore urges the BSB to ensure that the costs of the “knowledge” part of the qualification are kept as

low as possible. YLAL encourages the BSB to work with the Inns of Court to provide a set of well-designed online modules which could be accessed by all students for a relatively modest fee.

24. Secondly, YLAL supports the COIC Proposal due to its flexibility. Unlike the current BPTC where class attendance is compulsory, it is desirable that students should be able to study in private for the “knowledge” aspect of the qualification. Not only does this have implications for the costs of the qualification (explained above), but it is also more compatible with the demands faced by many students – typically the less privileged – who need to work alongside their studies and/or have caring responsibilities.
25. Thirdly, by splitting the “knowledge” from the “skills” element of the qualification, and crucially preventing those who have not passed the first element from commencing the second, the COIC proposal would prevent those who are highly unlikely to secure a pupillage from expending significant amounts of money on their training for the Bar. This is important as it would protect people who are often young, lacking sufficient information and already in significant debt from being lumbered with a further, entirely unnecessary, financial burden. It also means that scholarships and bursaries can be concentrated on those students who have demonstrated some aptitude for a career at the bar.
26. For completeness it is noted that YLAL considers that the above advantages could be achieved by the COIC Proposal without compromising the quality of training. This is because, unlike skills such as advocacy, the “knowledge” part of the qualification can be well taught from books and online materials - there is no need for expensive and inflexible face-to-face contact and compulsory attendance. Moreover, reducing the number of people embarking on the “skills” part of the course should actually improve the quality of the training as all of those in a “skills” class will have to be of a certain standard to have passed the “knowledge” exam. As a result, classes of students taking the “skills” part of the course should be of the requisite academic standard and will benefit from working alongside peers of similar ability. Regrettably, in the experience of our members, as present a significant number of BPTC students do not have the necessary academic or English language skills to secure pupillage or practice at the bar.
27. On this basis, YLAL endorses the COIC Proposal and, subject to the caveats set out above, encourages its adoption by the BSB.

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[www.younglegalaidlawyers.org](http://www.younglegalaidlawyers.org)

[ylalinfo@gmail.com](mailto:ylalinfo@gmail.com)

@YLALawyers