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**YOUNG LEGAL AID LAWYERS**

**Response to the Bar Standards Board Consultation on the Future Training of the Bar: Academic, Vocational and Professional Stages of Training**

**30 October 2015**

**About Young Legal Aid Lawyers**

1. Young Legal Aid Lawyers (YLAL) was formed in 2005 and has over 2,000 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.

**Introduction**

1. The consultation poses a number of questions. We have responded to these below.
2. However, at the outset we would like to invite the BSB to attend a focus group of YLAL members who are practising or aspiring barristers. We believe that this focus group would allow the BSB to properly engage with the view of GDL and BPTC students, pupils, and junior barristers at the publicly funded Bar.

**RESPONSES TO PART 1: THE ACADEMIC STAGE**

1. The draft Professional Statement set out in the BSB consultation states that a barrister must:
   1. Have a knowledge and understanding of the key concepts and principles of public and private law.
   2. Employ effective research skills in all subjects relevant to their work.
   3. Apply effective analytical and evaluative skills. (….)
2. Respond appropriately to the needs and sensitivities of those from diverse backgrounds and circumstances. (….)
3. Act with the utmost integrity and independence at all times, in the interest of justice, representing clients with courage, perseverance and fearlessness.(….)
   1. Adopt a reflective approach to their work, enabling them to correct and admit if they have made mistakes.
   2. Ensure they practise with adaptability and flexibility, by being self-aware and self-directed, recognising and acting upon the continual need to develop their knowledge and skills.
4. In considering the questions posed in this section of the consultation YLAL consulted a small focus group of our members (“the focus group”) who have recently left legal education (whether through graduating with an LLB or completing the GDL). The views of this focus group are incorporated into YLAL’s responses to the consultation. Accordingly our answers to many of the consultation questions are thoughts raised by members of our organisation.
5. YLAL strongly believes that the BSB should fully and properly engage with students and aspiring barristers at the publicly funded Bar. We would again invite the BSB to consult with YLAL and its members by way of focus group or informal discussion.

**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 (paragraph**  [**63**](#page14) **above)?**

1. There was a strong feeling within the focus group that the main focus of the current legal education system was merely acquiring enough knowledge to pass exams and gain the qualification. This was especially prevalent within responses from those who had completed the GDL: students were informed in their first weeks of study that they had less than 30 weeks to learn the whole syllabus to pass the qualification. This method of “cramming” information was thought to be ineffectual, as individuals felt that they were only acquiring legal knowledge for an exam.
2. The focus group viewed the learning requirements on the BPTC as completely different in style. The practical training within the vocational stage was thought to suit some styles of learners better than others, and therefore those who were able to engage on a more practical level were more likely to succeed then they had done at the undergraduate stage of legal education.

**QA2a: 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?**

1. The focus group considered whether it would have been possible to undertake the vocational course without a previous level of academic legal training. Where faults were found in the academic stage of legal training, it was felt that this knowledge needed to be acquired before the vocational stage of education. Students felt that unlike other legal professions, the independent nature of a career at the Bar meant that every individual needed to be equipped with sufficient legal knowledge before the vocational stage of training and before entering into practice.

**QA3: Are there any other issues in relation to intellectual abilities and degree classification, as set out above in paras**  [**65**](#page14) **to**  [**74,**](#page16) **which we have failed to identify?**

1. YLAL believes that the BSB’s consultation on the academic stage of legal education has not adequately reflected upon and developed Point 2.3 of the draft Professional Standard. Point 2.3 states that barristers need to:

*“Respond appropriately to the needs and sensitivities of those from diverse backgrounds and circumstances. (….)”*

1. YLAL believes that candidates entering the vocational stage of training are increasingly from a selective social class and background. YLAL believes that imposing more stringent minimum requirements, for example the Bar Course Aptitude Test (BCAT), will not remedy this issue. In particular, YLAL does not believe that academic calibre is necessarily the correct way of assessing a candidate’s ability to deal with clients from diverse backgrounds and circumstances.

**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.**

1. YLAL believes that this statement provides a good starting point. However, the statement does not reflect the key issue of law in practice, which would be of use to all undergraduate students, and especially those wishing to pursue further professional studies.
2. Within the academic stage of training many students noted that teaching at an undergraduate level was focused upon the theoretical aspects of the law, rather than the practical application of the law within common teaching areas. The lack of focus on practical training at an academic stage was particularly evident once vocational training was started. The focus group felt that new skills on how to factually analyse and advise in specific cases were especially underdeveloped within academic studies.

**QA5: Assuming you agree with the formulation in paragraph**  [**8**](#page18)**3, 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.**

1. Members of our focus group highlighted both the benefits and the disadvantages of the proposals (a) to (e) in paragraph 89, which can be summarised as follows:
2. *Setting out legal subjects which must be studies by those wishing to become barristers*

* This proposal would be practically unworkable. Frequently universities have course modules set up which best suit future barristers (e.g. Law of Evidence), but may not have the capacity to provide for all students wishing to undertake those modules.
* Law students may decide to come to the Bar or undergo vocational training at a later date after academic studies, and these requirements may preclude such students from coming to the Bar.

1. *Setting out certain prescribed subjects, with minimum study-time for each;*

* There was a consensus that certain prescribed subjects need to be studied by those who wanted to pursue a future career at the Bar. Prospective barristers must have the requisite legal knowledge to practice at the Bar.
* Students felt that the practical knowledge and application of these prescribed subjects could be expanded within academic studies, in order to better equip those who wished to later pursue a career at the Bar.
* However, a “minimum study time” for each prescribed subject was thought to be unworkable in practice, as it would not adequately account for students who work at different paces to their peers.

1. *To not prescribe any subjects, but set a minimum study-time to be spent on the basic concepts and principles of public and private law as a whole*

* Among students, it was felt that in order to pursue vocational and professional levels of training, future barristers needed to be equipped with basic knowledge in core areas of legal knowledge.
* For this reason, it was felt that it would be a dangerous step for the BSB to not prescribe subjects that needed to be studied at an academic stage, as this would inadequately prepare barristers for practice.
* As discussed in point (b) above it was felt amongst students that a set minimum study time to be spent on the basic concepts of public and private law would be unenforceable and lack accountability.

1. *To not prescribe detail or study-time, but give guidance as to what would be considered appropriate for one or both of those*

* Students felt that to only give guidance as to what should be appropriately studied at an academic stage would not prepare future members of the Bar for practice.
* Furthermore, it was felt that it would be impossible for members of the Bar to meet the required standard within the draft Professional Statement without having studied prescribed subjects to a required practice standard.

1. *Prescribe nothing and give no guidance: if the degree has been awarded by a University that is operating in accordance with the with the requirements of the quality assurance systems in UK Universities, and the Office of the Independent Adjudicator for Higher Education, that will suffice for us.*

* Students felt that this approach to legal education would not provide future members of the Bar with the sufficient knowledge or intellectual discipline that is required within practice.
* This approach would place the onus of professional standards increasingly upon universities themselves, rather than the BSB.
* Through this approach, it would be impossible for the BSB to ensure that members of the Bar adhere to the draft Professional Statement that was set out earlier in the proposal.

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

1. The focus group felt that the pace at which legal knowledge was required on the GDL course meant that there needed to be strict adherence to the core legal studies required. The usual concern that students express towards “learning and cramming for exams” was particularly highlighted by students who had completed the GDL. These students felt that the course structure left them inadequately prepared at the start of the BPTC, due to a lack of in-depth knowledge.
2. For these reasons, previous students of the GDL felt that any variation away from the academic requirements set out by the BSB would leave them particularly ill-equipped to undertake further vocational and professional training in order to practice at the Bar.

**RESPONSES TO PART 2: THE VOCATIONAL STAGE**

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

1. The BSB is not proposing to abandon the vocational stage of training. YLAL understand that barristers provide a specialist service within the legal sector and therefore specialist training is required for prospective barristers. In particular, YLAL agrees there is a clear need for training in advocacy and professional conduct as a barrister.
2. YLAL’s main purpose in responding to this consultation is to argue that all legal training needs to be made substantially more affordable. Moreover it must ensure that prospective applicants are qualifying as barristers on merit and not because of social background.

**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?**

1. YLAL shares the view of the consultation on the recent changes to the legal profession. In particular, YLAL draws attention to the significant cuts to public funding in both criminal and civil law contexts. YLAL has campaigned publicly and vigorously against these cuts.
2. YLAL is particularly concerned about the impact of the changes to the legal services market since the introduction of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) in April 2013. As the BSB correctly identifies, LASPO undermines access to justice, increases the number of litigants in person, and prevents prospective claimants from bringing meritorious cases.
3. YLAL is very concerned that the changes described above are having a chilling effect on entry to the profession. Prospective barristers are discouraged from pursuing a career at the publicly funded Bar. It is often perceived by prospective entrants that there is no future to this type of work. Anecdotally, for example, it is not uncommon to be told at careers events and by senior members of the Bar that aspiring criminal legal aid barristers should think again because jobs are so poorly paid.
4. It is a core aim of YLAL to promote the interests of new entrants and junior lawyers who wish to pursue careers in areas that have traditionally been publicly funded. YLAL remains concerned that the reduction in public funding will result in far fewer prospective barristers who feel they can make a career in such areas, to the detriment of those in society who need our assistance the most.

**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?**

1. YLAL is keenly aware of the impact of developments to technology within the legal sector. This includes issues around client confidentiality, paperless working and data security. YLAL invites the BSB to consider including these areas in the Professional Ethics module of the BPTC.

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

1. YLAL is concerned that the BCAT is nothing more than an expensive charge on prospective barristers.[[1]](#footnote-1) The current pass rate for the BCAT is around 98%. The cost of the test is £150.
2. Even if the test was to be made more challenging in an attempt to lower the pass rate, YLAL would be concerned that a test which allows for unlimited re-takes at a cost of £150 per re-take would give an unfair advantage to those who could afford to re-take several times.
3. We share the views raised in the report by HH Geoffrey Rivlin QC ‘Criminal Justice, Advocacy and the Bar’ that the BCAT is not an “effective filter” and that any alternative assessment proposed should be accompanied by an “impact assessment” to ensure that it was not prejudicing certain groups of people over others.[[2]](#footnote-2)

**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?**

1. YLAL shares the concerns of the Rivlin Report (see above) that the current vocational training system allows a large group of people to undertake the BPTC at considerable expense with very little prospect of attaining pupillage. We are keen to consider ideas on improved selection procedures that are fair to all candidates, whilst protecting applicants from incurring unnecessary expense and disappointment.
2. It is crucial that any selection procedure does not undermine the diversity of the profession. As Lord Neuberger wrote in his 2007 report, *“It is also, because, if the pool from which candidates are selected is small, then many of the most able people will be prevented from being barristers which results in a less effective Bar as a whole.”[[3]](#footnote-3)*
3. YLAL believes that social mobility and diversity must be central to any BSB strategy to reform this area. Similarly, any reform or replacement of the BCAT must focus on reducing unnecessary expense for prospective candidates. Moreover it must enable individuals of all social backgrounds to show their potential. YLAL is concerned that simply reducing the number of people taking the BPTC will lead to a narrowing of access to the profession.

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

1. Yes.

**QV7: Are there any other issues in 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?**

1. The focus group felt that one of the great benefits of having vocational training for barristers is that it should give those who undertake the training time to practise and develop practice skills, particularly in advocacy.
2. As currently structured the BPTC involves a number of centrally assessed modules: Civil Litigation, Criminal Litigation and Professional Ethics. These modules tend to dominate the second half of the BPTC year (for full-time students).
3. The focus group questioned the relevance of learning very large amounts of the Civil Procedure Rules and Archbold Criminal texts to the modern Bar. This is particularly relevant as the assessment of these modules is by way of closed-book exams. Many of the rules learnt will be out-of-date by the time a student’s pupillage commences and, either way, practising barristers can always refer to the rules when needed. The memory-test element of such assessments may well reduce the number of people who pass the examinations. However, the focus group did not feel that it was a particularly effective way of testing a person’s capability to be a practising barrister.

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

1. 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?**

1. BPTC tutors have raised concerns about the marking schemes for such assessments. In particular, that the marking scheme is too prescriptive and not flexible enough, for example if a student fails to use a key word.[[4]](#footnote-4) There are obviously some examples where using a specific word will be very important. However, YLAL remains concerned that talented individuals are being disadvantaged by a lack of reasonable flexibility and that BPTC assessments are not truly meritorious.
2. Students who pay £18,000 course fees deserve greater clarity on how they are being assessed. Examinations ought to truly test students' ability to be future barristers. There should also be an open and transparent way for students to challenge or seek redress after their results with clear explanations if a challenge is not upheld.

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

1. Yes.

**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?**

1. Some have estimated the BPTC to be the most expensive legal course in Europe. The cost of the BPTC is set to rise again for the year 2015-2016 with some providers set to be charging as much as £18,500.[[5]](#footnote-5)
2. By way of context, the Institute for Fiscal Studies recently found that many students are now leaving university with, on average, £44,035 worth of student debt.[[6]](#footnote-6) If students have transferred from a non-law degree, they will also have paid an extra £7,000 to £11,000 to undertake the Graduate Diploma in Law plus living expenses.[[7]](#footnote-7)
3. YLAL accepts that the Inns of Court provide significant scholarships for students to undertake the BPTC. However, to take the example of Lincolns Inn, only 13 scholarships were awarded for 2015-16 that covered the full BPTC course fee at the University of Law. Sixty-six scholarships were made available up to £15,500, which would still have left students with several thousands of pounds to find to cover London course fees.[[8]](#footnote-8) Furthermore, none of this takes into account the considerable living expenses that most students bear alongside their course fees. The Middle Temple Young Barristers Association has estimated that the most frugal living expense for students in London would be £13,200 for the year.[[9]](#footnote-9)
4. The vast majority of students who undertake the BPTC do not receive any funding from the Inns of Court. It should also be noted that Middle Temple are considering removing funding for the BPTC, either in part or in full, in order to provide support to newly qualified barristers in pupillages that offer low income.[[10]](#footnote-10) Bank loans are increasingly risky given the low pay that pupils are expected to live on. The minimum pupillage award of £12,000 is below even the minimum wage and considerably below the London living wage.
5. YLAL is very concerned that the significant cost of the BPTC is deterring applicants from pursuing a career at the publicly funded Bar. The financial contributions from the Inns are a significant investment but not sufficient for individuals without the support of a second income.
6. YLAL believes that the excessive costs of vocational training benefit BPTC providers, but not students. The current BPTC model is, in our view, unsustainable. Course fees are set to continue to rise. It is plainly contrary to social mobility and access to the profession for BPTC providers to be pricing out talented applicants who are unwilling to make the gamble with no guarantee of pupillage. A diverse and accessible Bar is fundamental to its future. YLAL cannot see how the BPTC in its current form helps achieve that vital goal.

***FUTURE OPTIONS FOR THE VOCATIONAL STAGE***

*Approach 1: “We will continuously improve the current arrangements”*

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

The paper states that the current BPTC course provides “reasonably effective training for those that progress into the profession”. Those who progress into the profession are less than 1/3 of people who undertake the course each year. It would be useful if statistics were published outlining the exact correlation between those who do the BPTC and those who progress into the profession. The phrase “reasonably effective training” also does not encompass overall student satisfaction. Those who have taken the course and progressed into the profession have still felt negatively about the training they received, that the training level and education provided was not at a level that matched the amount paid and that the course was not necessary, as most necessary skills were acquired during pupillage.

A review of the syllabi on the BPTC for “greater consistency and clarity about what is core” is necessary. Ensuring consistency of education will create a level playing field between providers and the syllabi will become standardised. This standardisation will also ensure that the commercial interests of providers remain ethical, as those paying the same amount to different providers for the same course, will be provided with the same level of education and trained to the same standard. This is a fairer approach than the regime currently in place.

It is agreed that consistency in the experience of the training would be improved through this approach. It is also agreed that this will support the equality of standing of the qualification and will mitigate the risk of the qualification having a stronger reputation and market value from one particular provider.

We do not agree that this approach will create a “community of practicing”. A community of practicing is difficult to achieve in an environment where providers want to protect their commercial interests over wanting to provide a high or central standard of education. There is a need to eliminate the competitive nature of providers because of their commercial interests and replace this with an interest to provide a standardised and equal level of education. However, this is difficult to expect from a private business whose priority is to make a profit. Kaplan providing the BPTC can be used as an example to suggest that private business may not be able to “ignore” their commercial interests. Kaplan as a business and a provider tried to act ethically by limiting the number of students who could undertake the BPTC course, through having a higher-level entry standard, test and interview and subsequently only accepting those with a realistic chance of progressing within the profession. However, Kaplan were no longer able to offer the BPTC in 2014, as it was no longer financially viable for them to run the course.

We do not agree that there should be a differentiation between what is examined as essential and what is examined as desirable. All of the education being provided within the BPTC must be considered essential. It is understood that some parts of the course will be considered more important than others – however the wording of “essential” and “desirable” are not the correct terms to be used. It is believed that all the training on the BPTC is essential and that the modules of the BPTC should be defined using a scale of how essential they are, rather than using objective, black & white terminology.

It is agreed that this approach would ensure the continuous improvement of assessments.

The disadvantages of the course are also agreed with; the approach will only go a short distance in addressing the issues, the approach lacks flexibility and the approach is unlikely to improve the affordability of the BPTC. A progressive adjustment to the current course will not eliminate the risk that candidates take on financially and the course will remain non-translatable and will remain valueless for use in other professions.

It is agreed that under this approach, the BPTC will be slow to adapt because primarily the regulator will determine the changes. The change needs outside input from members of the chambers and employers, otherwise the providers will be slow to implement changes.

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

A further disadvantage that has been recognised is that if options are provided on the course (in areas of substantive law and practice, different to the core modules of the BPTC), these courses need to also be standardised across all providers. If they are not then the level-playing field being rolled out following the standardisation of core modules will be in vain, as this will not happen in practice.

Furthermore, if a margin of appreciation is given to providers in terms of how long they take to implement change or how they go about injecting the changes into the day-to-day teaching and running of the course, this may mean that the changes will be implemented very slowly. If changes were to be made to the current course, providers would need to be provided with a time frame in which to make the changes.

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

The approach does very little to address the issues related to having a minimum entry standard. Having to have achieved the same entry standard means everyone would have had to have the same level of education – this raises social mobility issues. If a minimum standard of a 2:1 degree was introduced, a way around this issue would be to offer a course to bring those with a 2:2 or lower to same level of entry standard of those with a 2:1 and above, or to measure entry standard using a two tiered system: education level and potential to progress in the profession (through merit and a practical interview).

Approach 2: We will allow any training that demonstrates the barrister has achieved the required outcomes

It is thought that this approach is too broad and would have to be heavily regulated, which would end up costing more money and potentially driving up the cost of the BPTC.

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

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

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

It is disagreed that the course should be opened up to all providers. This approach states that the “provider would have to demonstrate… that required outcomes could and would be met”. How would the provider demonstrate this if they have never provided the course before (there will be no concrete proof that their teaching would work) and how often would they have demonstrate this (just before they become a provider, or quarterly/periodically throughout their first year of being a provider?). This further regulation would cost more money. It is the responsibility of the regulator to ensure the interests of the students are protected, and through opening up the course to be provided at any institution that has the status of university, then the regulators are creating a lot more work for themselves and may lose sight of protecting the interests of students. However, an advantage of this approach could be that creating more providers would force more competition between them, meaning the price of the course may become lower if enough new providers were to start providing the BPTC.

It is agreed that this approach would make the course more flexible. It is also agreed that IT can help improve the cost of the course, as it would be more economically efficient to use online examinations, lectures and marking. This could increase the accessibility and affordability of the course. It is agreed that a more varied use of IT services would be a good thing for the course. However, there could be potential social mobility issues here, as all students would need access to the internet, access to a laptop and working knowledge of how to use a laptop and its software. The providers would need to ensure that everyone undertaking the BPTC is trained to an adequate level on a computer. If they are not, it would need to be standard practice to ensure that they are IT literate before they began the course, or they would not be on the same entry level as the other candidates.

It is agreed that this approach is flexible. It is also agreed that the approach provides an advantage in that providers can design courses that support progression to careers other than the bar. It would be useful to be provided with practical examples of this. It is agreed that the course should be transferable because of the amount of money it costs and the risks of not being able to progress into the desired profession. The course costs the same amount of money as doing two masters degrees – suggesting that it should be able to be used in environments other than the route to the bar.

It is agreed that the approach will mean that providers can adapt to any changes in the market.

It is agreed that employers, chambers and other entities will have a greater opportunity to influence the design of the course to meet their needs.

It is agreed that the main disadvantage of this course is that there is no standardisation. This is necessary to ensure that the course is fair and that there is a level playing field, in terms of training, on completion of the course.

It is disagreed that the approach may result in the “complexity in the market” confusing candidates. This is patronising wording about candidates who will be very familiar with the market and their options, due to the vigorous research asked of them during assessments for scholarship and pupillage.

Approach 3: We will specify and control only a final stage of training, following a barristers achievement of key outcomes determined by assessment.

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

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

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

It is agreed that under this approach the regulator “would not rely upon centralised assessment alone to assure standards at the point of qualification as a barrister”. It is also agreed they the regulator should “identify a core of knowledge-based requirements” as this would mean that training routes to the assessment would be free for the market to provide as it saw fit. However, this may lead to more complications as there will be more competition created, and a ‘gold standard’ route may be created. This will be discussed in more detail later in this document.

It is agreed that by providing a smaller course, this approach will give a more flexible approach by specifying only a program of advanced skills training, including oral and written advocacy, specialist legal advice and professional ethics. It is agreed that the advanced training needs a very clear focus on standards at the point of qualification.

It is agreed that the entry assessment for the higher standard skills training in this approach needs to be difficult. It is agreed that this approach improves the opportunity for candidates progressing to the advanced formal training to assure themselves that they have aptitude to succeed as well as constraining and de-risking the cost of the training.

It is agreed that the entry assessment could be used as a transferable qualification, thus providing quite a flexible approach to training. This could also create another marker for those who want to take the entry course to obtain standards transferable to another profession. It is agreed that this approach could create a cost effective way of providing mass training opportunities for those intending to pursue a legal career.

However, it is agreed that the main disadvantage of this approach is that a gold standard route may develop. This may produce social mobility issues, as one particular route to the advanced training may be more expensive, if it can prove to have a higher rate of people getting through to the advanced training. This would mean those who cannot afford it will be excluded, lessening their chance to progress to the advanced stage. A way to get around this issue would be to introduce a price cap on those providing initial entry assessments and training for this assessment.

It is agreed that commercial interests of the providers may overtake their desire to provide low-cost opportunities for the entry-level assessment (initial assessment).

**Our preference is the third approach if it was tweaked in the ways mentioned above.**

**RESPONSES TO PART 3: THE PROFESSIONAL STAGE OF TRAINING, OR PUPILLAGE**

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

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

1. YLAL has answered questions QP1 and QP2 collectively.
2. YLAL agrees with many of the issues raised regarding recruitment and selection for pupillage.
3. YLAL is concerned that at present the quality of pupillage recruitment is variable between chambers. Some are very aware of social mobility and diversity issues, and others seem blind to it. In particular, YLAL is concerned that those who recruit for pupillage need to be aware that many of the most valued “traditional” ways that experience is gained, involves voluntary work or unpaid internships. This is not something available to those from low-income backgrounds or those who, for example, have dependent children.
4. YLAL believes that more needs to be done to (a) educate those recruiting for pupillage about these considerations, (b) regulate chambers to ensure they are transparent about the criteria they use to assess applicants, and (c) introduce a mechanism to challenge those chambers who do not give appropriate weight to “non-traditional” experience.
5. YLAL note in particular the issues raised at paragraphs 249 – 254 of the consultation. Access to pupillage for those from low-income backgrounds, or who do not have parental support is not just impeded by the recruitment process, but by the very low pupillage award in many publicly funded sets. The minimum award of £12,000 works out as less than the take-home pay of someone working a 40-hour week on the minimum wage, and far below the living wage. YLAL believes that simply raising the minimum award is not an appropriate response. The decrease in available pupillages in publicly funded areas will become even more pronounced thereby limiting the pool of future barristers to practise in these areas. Rather, more needs to be done to secure additional funding from other sources to ensure that individuals are financially able to train in publicly funded areas of law.
6. The public interest cannot be served when the public is represented by a narrow subset of society that is not representative. This is particularly true when many of the most able candidates are unable to undertake pupillage due to recruitment issues or a lack of funding. As such, YLAL believes that these issues of social mobility and access to the profession fall well within the regulatory function of the BSB.

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

**QP4: Are there other issues which the regulator should take into account when thinking about the structure of pupillage and the quality of experience for the pupil?**

1. YLAL has answered questions QP3 and QP4 collectively and with specific reference to the quality of experience for a pupil.
2. YLAL agree with the observations in the consultation that more should be done to protect the interests of pupils. This includes ensuring that pupils are being appropriately treated and mentored through the pupillage experience.

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

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

1. YLAL has answered questions QP5 and QP6 collectively.
2. YLAL agrees that the level of training provided by pupil supervisors can vary to a great degree between different chambers, particularly in publicly funded areas of law

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

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

**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?**

1. YLAL agrees that the regulatory objective of ensuring that there are sufficient pupillages in publicly funded areas of law remains a crucial part of the regulator’s role. However, YLAL is concerned that social mobility and access to the profession are also vitally important given the regulator’s duty to the public. This is something that should be considered as influencing the regulator’s role in pupillage.
2. In terms of the level of regulation and oversight of pupillage, YLAL is not best placed to comment on the minutiae. However, the experience of our members is that any decrease in either (a) ensuring that appropriate opportunities are available or (b) the level of oversight of the training provided is likely to hit those chambers reliant on publicly funded work the hardest, as it is these chambers which are struggling the most in all areas.
3. YLAL is concerned at the proposal of an external assessment at the end of pupillage for the following reasons. Firstly, a one-size fits all approach is unlikely to be helpful, as this is what is already achieved by the BPTC. The specialised knowledge and skills learned during pupillage will be very specific to the practice area(s) undertaken by chambers. Secondly, there is a real concern as to who would bear the cost of any such assessment. It is unrealistic for those being paid the £12,000 minimum pupillage award to cover the cost of an additional assessment. This is particularly significant where the fees for the vocational stage are so high. Furthermore, for those chambers specialising in publicly funded areas of law, who are operating at the margins, covering the cost of the assessment will provide a further financial disincentive for taking on pupils.
4. In conclusion YLAL believes that whilst the regulator should regulate the provision of the professional stage and maintain an oversight of the training of pupils, a further, external assessment is unlikely to be beneficial to either the public or to individuals seeking to enter the profession.

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

1. YLAL agrees that the fundamental state of pupillage as a period of paid, work-based training as a pre-requisite is a sensible model. Few alternative experiences will offer the advocacy and specialised training that pupillage provides.

**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?**

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

1. In respect of QP11 and QP12, YLAL has nothing further to add.

**QP13: 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?**

1. YLAL agrees that greater chambers’ supervision of pupil supervisors is likely to ensure a greater consistency of training. YLAL would however wish to obtain greater detail about this proposal before commenting fully. Any regulatory burden will still fall on individual barristers within chambers. The regulator would need to ensure that any such regulation did not further decrease the number of available pupillages in publicly funded areas.

**QP14: Do you think there should be more systematic initial validation of PTOs and supervisors?**

**QP15: Do you think there should be periodic re-validation of PTOs and supervisors?**

**QP16: Do you think there are benefits in a published list of approved PTOs and supervisors?**

1. In respect of QP14, QP15 and QP16, YLAL has nothing further to add.

**Different approaches for change:**

Approach 1: Continuous improvement of the current arrangements

1. Advantages of the continuous improvement approach include:

a)  The current nature of pupillage is well understood by chambers and prospective pupils: change would be organic and gradual, minimising business and cultural disruption for practitioners and allowing any increased cost to be planned for;

b)  The broadly fixed duration and cycle of pupillage largely matched to the “academic calendar” creates a stable and uncomplicated market for recruitment;

c)  The approach would be relatively simple for us to administer as it would build on existing materials such as the Pupillage Handbook;

d) The improvements would align with our overall approach and would be prioritised in accordance with the risks that needed to be addressed and the resources available to do so.

Disadvantages of the continuous improvement approach include:

1. The approach might focus too much on administrative process and do little to address regulatory risks in a systematic way;
2. The approach might not give chambers or other entities/employers the flexibility they seek;
3. Responsibilities for delivery of effective pupillage might remain unbalanced as between chambers, pupil supervisor and the pupils themselves, which might reduce the effectiveness of regulation;
4. The approach may fail to meet our objective of focusing on outcomes, as opposed to prescribing content of training, as a way of assuring standards.
5. the issues outlined above in relation to the vulnerability of pupils might not be resolved soon enough;
6. regulation of pupillage might be out of step with “mainstream” BSB regulation.

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

Are there any other advantages or disadvantages to this approach? Are the any equality impacts of this approach that you are aware of?

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

The advantages of this approach include:

a)  Clearer accountability for an approved pupillage would be vested in the PTO which is best placed to take responsibility for training its pupils (and likely future tenants);

b)  Greater opportunity for the PTO to design pupillage that matches the nature and structure of its business and practice areas, whilst meeting the expectations of the Professional Statement;

c) Opportunity for PTOs to adopt a standard model of pupillage if they do not wish to, or cannot afford to invest in developing their own proposition;

d)  Opportunities for chambers, entities and employers to collaborate cost effectively on the design and delivery of more flexible pupillage programmes;

e)  Greater opportunity for competent bodies to contribute to and draw on the community of best practice at this stage of training, for example the Advocacy Training Council or the Crown Prosecution Service;

f)  Greater flexibility within some fixed parameters might encourage a larger number of pupillages to be available in the market, helping to meet unmet needs of both consumers of legal services and those aspiring to practise.

The disadvantages of this approach include:

a)  Prospective pupils might need to consider more carefully the specific arrangements attached to individual pupillages on offer;

b)  Limited scope for improvement of systems for quality assurance in smaller PTOs;

c)  Risk of inconsistency of standards at the point of authorisation through too great a variation of content and delivery;

d)  There may not be enough capacity in the market to sustain this approach without specific incentives;

e)  The approach does not necessarily address the issues in relation to vulnerability of pupils;

f)  BSB would need to transfer or increase resources to develop expertise in relation to approval and oversight of programmes and evaluation of pupil’s readiness for authorisation, so it could be more costly;

g)  The shift of responsibility to PTOs for the design and operation of the scheme would result in increased costs for PTOs;

h)  Changes in regulation risk, and increased regulatory cost, precipitating decline in the availability of pupillages, over and above that driven by the market;

i)  Changes/volatility in the regulatory framework risk unintentionally making pupils more vulnerable in comparison to their chambers and/or supervisor or indeed themselves, reducing capacity in the market.

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

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

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

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.

The advantages of this approach include:

a)  great flexibility allows for pupillages to be adapted to the greatest variety of circumstances;

b)  it may allow for a pupil to gain relevant experience and qualify while carrying out work that is remunerated at a higher rate than the average pupillage award;

c)  the number of people “converting” a vocational stage qualification to full authorisation might increase significantly, helping to address unmet consumer need and potentially bringing more legal service provision within affordable price ranges and enhancing access to justice.

The disadvantages of this approach include:

1. provisional authorisation in such circumstances would introduce new risk to the interests of consumers, whereby inexperienced practitioners would be able to provide a wider range of legal services;
2. it might become much more practically difficult and more costly for us to operate a system to assure consistent outcomes and maintenance of necessary standards. That increased cost would almost certainly be passed on to the profession, or be charged to individual pupils;
3. the approach is outside the experience of a profession that has a deeply-embedded and valuable professional cultural approach to training, risking a loss of confidence and capacity amongst those most capable of providing the training;
4. lack of accountability on the part of the PTO where one was involved might increase the vulnerability of the pupil;
5. the approach might not provide the sufficient opportunity for us to address the range of risks associated with pupillage set out earlier in this consultation;
6. the cost of an external assessment would need to be borne by either the PTO supervising the pupil, or quite possibly the pupil themselves.

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

**Are there any other advantages or disadvantages to this approach? Are there any equality impacts of this approach that you are aware of?**

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

**Have you identified any other approach we might reasonably adopt in respect of professional, work-based training for barristers and which would satisfy our consultation? If so, please briefly outline that approach.**

We do not express a view on the respective merits of the three approaches set out, but, as stated above, would like to invite the BSB to attend a focus group of YLAL members who are practising or aspiring barristers to discuss the different approaches to change. We believe that this focus group would allow the BSB to properly engage with the view of GDL and BPTC students, pupils, and junior barristers at the publicly funded Bar.

**Young Legal Aid Lawyers**

October 2015

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1. <http://westerncircuit.co.uk/data/documents/Rivlin-Report_Final-March-2015.pdf> ‘Criminal Justice, Advocacy and the Bar’ Criminal Justice Reform Group report March 2015, p.50 [↑](#footnote-ref-1)
2. As above [↑](#footnote-ref-2)
3. <http://www.barcouncil.org.uk/media/164103/finalreportneuberger.pdf> Lord Neuberger, ‘Entry to the Bar Working Party: Final Report’, p.18 [↑](#footnote-ref-3)
4. <http://l2b.thelawyer.com/courses/bar-professional-training-course/the-bptc-is-exploitative-providers-dont-care-about-you-they-care-about-the-money-bsb-focus-group-lays-bare-bptcs-problems/3037131.article> [↑](#footnote-ref-4)
5. <http://www.lawcareers.net/Information/News/BPTC-fees-to-increase-again-in-2015-16-while-the-Bar-recruits-fewer-than-500-ne> [↑](#footnote-ref-5)
6. <http://www.bbc.co.uk/news/education-26954901> [↑](#footnote-ref-6)
7. <http://studyinglaw.co.uk/law-conversion-course-costs/> [↑](#footnote-ref-7)
8. <http://www.lincolnsinn.org.uk/index.php/education/scholarships/scholarships-and-bursaries-for-the-bvc-year> [↑](#footnote-ref-8)
9. <http://www.middletemple.org.uk/sites/default/files/documents/Final%20Note%20to%20MT%20members.pdf> (page 4) [↑](#footnote-ref-9)
10. <http://www.middletemple.org.uk/sites/default/files/documents/Final%20Note%20to%20MT%20members.pdf> (page 1) [↑](#footnote-ref-10)