



Future Bar Training Consultation:

Academic, Vocational and Professional stages of training

**A response by
The Chartered Institute of Legal Executives**

29 October 2015

For further details

Should you require any
further information,
please contact;

Vicky Purtil
Head of Qualifications
vpurtil@cilex.org.uk
01234 845761

October 2015

ABOUT CILEx

1. The Chartered Institute of Legal Executives (CILEx) is the professional association and governing body for Chartered Legal Executives, other legal practitioners and paralegals. CILEx represents around 20,000 members, which includes approximately 7,500 fully qualified Chartered Legal Executive lawyers. CILEx is also a nationally recognised Awarding Organisation, regulated by the Office of the Qualifications and Examinations Regulation (Ofqual) and Qualifications Wales.
2. CILEx has reviewed the information contained within the consultation documentation and has considered the questions posed. Where appropriate, CILEx has provided responses to these questions, they are included at the end of the document. CILEx has also provided some general commentary on the issues arising from the consultation and has offered an alternative approach to qualification which could be considered by the Bar Standards Board and which may address many of the challenges outlined in the consultation document.

INTRODUCTION

3. The Bar Standards Board's (BSB) consultation on the future of training for qualification reviews the current training requirements for qualification as a barrister, which consists of 3 linear requirements. The documentation reflects these current requirements and is split into 4 sections:
 - Academic stage
 - Vocational stage
 - Pupillage
 - Statistics
4. Information is included on key influences impacting on the legal services market, which are considered relevant in ensuring that training for the Bar is fit for the future.
5. The BSB has stated that its vision is to in future admit barristers by reference to a Professional Statement which focuses more on competences required of a barrister, defined as outcomes, rather than defining the process(es) by which individuals should qualify. This shift in thinking it is hoped will enable more pathways to qualification to develop and thereby promote diversity and at the same time ensures that they meet the LSB's statutory guidance.

6. Another central factor in the resulting changes to the route to qualification as a barrister is that any pathway should be able to be delivered cost-effectively particularly in the light of the small numbers of new barristers created each year.
7. The purpose of the consultation is to set out the current training requirements, identify its advantages and limitations, set out possible alternatives and seek views on those alternatives as well as any other possible alternative not set out in the documentation.
8. Finally a clear statement that the BSB is not intending to abandon the 3 stage training approach is included.

GENERAL COMMENTS

9. The CILEx route to qualification offers a non-degree route to become a qualified lawyer. However, through the use of an inclusive and outcomes focused approach to admission, CILEx accepts members seeking qualification from a variety of backgrounds, including those who are unable to obtain a pupillage after completing the BPTC, offering a route to qualification as a Chartered Legal Executive.
10. CILEx has offered this flexible route to qualification for more than 50 years and would welcome the opportunity to collaborate with the Bar to not only ensure that this route to qualification continues to exist for those individuals who are unable to secure pupillage, but also to enable CILEx members to seek admission to the Bar should they wish to obtain this access.
11. CILEx would also like to offer the option set out below as an alternative to the amendments proposed by the Bar Standards Board to reform the education and training requirements for qualification as a practising barrister
12. Having considered the issues identified in the consultation documentation, CILEx has identified the following information as relevant to future training needs for barristers:
 - The existing Qualifying Law Degree provides an accurate enough basis on which to judge intellectual capacity and is sufficiently general to enable graduates to progress to other careers both in the law and other sectors. Although the Bar may also want to consider alternative qualifications which can demonstrate intellectual ability such as the CILEx Level 6 qualification.

- The BPTC is very specific and has very limited value outside of the Bar. This is however recognised by CILEx and applicants for CILEx membership can use these qualifications to become Graduate members and then proceed to qualification as a Chartered Legal Executive.
- The cost of the BPTC is such that it may put off better applicants from more diverse backgrounds, given the risk of not being able to secure pupillage on completion of the qualification.
- Although £4m is available to trainee barristers each year to support the vocational stage, the number of places on the BPTC are in the region of 1500-1800 each year, but pupil places are very limited at present (400-450) so much of the scholarship money is wasted.
- The requirement on training organisations to fund the pupillage may be limiting available places, particularly in the publicly funded sector of the Bar.
- Pupillage is often offered prior to the results of the BPTC being known.

13. Using this information CILEx proposes a possible alternative to the reforms set out in the consultation document.

14. It should be possible for chambers and employers to recruit pupils on the basis of a more rigorous and expensive BCAT, post 1st degree (or appropriate academic alternative) which tests the skills required to be a good barrister and to use the outcome of the test to enable chambers/employers to select pupils at this point in the process. Although this increases the initial cost, even a significantly extended BCAT would not require anything like the outlay that is required on the current BPTC, thereby allowing individuals to limit investment in an unsuccessful attempt to become a barrister at an earlier stage.

15. This selection tool, i.e. based on performance, is no different from limiting applicants on the basis of academic achievement or the number of pupillages available and therefore is not a regulatory restriction on numbers. The number of pupillages available would remain in the control of the chambers/employers.

16. Only those who have secured a pupillage would be able to register to undertake the BPTC (which could, but need not be, integrated into workplace learning to limit the issue of learning and then unlearning styles of working). Should the money received from those undertaking the BPTC with no intention to practice in England and Wales on completion of the course be an issue, an exemption could be created to allow

these individuals to continue to undertake the BPTC without having first secured pupillage.

17. This would mean the £4m currently available in scholarships from the Inns, could be better targeted at those who would definitely obtain a pupillage and are most likely to qualify. It would also enable chambers/employers working in publicly funded areas e.g. criminal and family law to offer pupillages, as there would be financial support to assist them in offering the training. This may impact positively on the total number of pupillages available, thereby increasing qualification opportunities. It may also address the issues of potential future shortages in these areas of work and, as the cost of training to the individual and to chambers/employers is likely to be lower, through the availability of subsidy through the Inns, could enable greater access, thereby benefitting the consumer and possibly having a positive impact on diversity by removing the risk of significant financial expenditure on such a bespoke qualification with little relevance outside of working at the Bar.

RESPONSES TO THE CONSULTATION QUESTIONS

The Academic stage

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

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?

QA2b: If so, how?

QA3: Are there any other issues in relation to intellectual abilities and degree classification, as set out above in paragraphs 65 to 77, which we have failed to identify?

18. The answers to these questions have been drafted as a single response.

19. CILEx is a non-degree route into the legal profession and therefore we consider that holding a degree and the reference to degree classification is not the only method of demonstrating the necessary intellectual ability to become an effective lawyer.

20. We consider that the creation of minimum access requirements, based on the achievement and classification of a degree, to be restrictive and to introduce a barrier

to qualification as a barrister to those who are unable, owing to their personal circumstances, to either complete this qualification or achieve the required classification.

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.

21. CILEx agrees that legal knowledge should be grounded in both public and private law and that enabling students to apply that knowledge in the contexts set out would be beneficial to individuals undertaking a QLD.

22. As stated in the response to the consultation on the Professional Statement, provided on 24 June 2015, the Professional Statement should also include coverage of ethics and professionalism. The Bar Standards Board may also want to consider the inclusion of knowledge and understanding of human rights law.

23. If the statement is to work for both self-employed and employed barristers, there should be some coverage of business awareness. In addition, there is no reference within the statement to considerations of costs, billing and client money. Although this is not traditionally part of training to become a barrister, direct access and litigation rights may require an understanding of these issues for all barristers going forward.

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

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

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

24. These questions have been answered in a single response.

25. CILEx does not offer an opinion as to how the regulator should ensure that legal knowledge and understanding from the formulation is contained within the academic stage of training, other than to note that the emphasis on a degree creates barriers to qualification as a barrister (as set out above) and that alternative routes to

qualification should also be considered when determining what the knowledge and understanding requirements of the academic stage should be.

QA8: Are there any other issues associated with the academic stage of training that we have not identified and to which, given our role as a regulator of barristers, we should be turning our minds?

26. It is important that the BSB does not restrict the content of legal education at this stage of the route to qualification as a barrister, as the QLD is taken by thousands of students each year and is used as a route to access other legal professions as well as for those students who decide to embark on a different career path once they have completed their QLD.

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?

27. CILEx agrees that developing the skills required to deliver successful advocacy through a period of vocational training is required.

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?

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

28. CILEx agrees that the changes in the legal services market identified are key features which will impact on the Bar and that these should be reflected in the vocational training requirements for barristers.

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

29. When compared with the cost of the BPTC, the cost of the BCAT is not expensive.

30. In relation to the issue of academic attainment, the restriction of access to barrister training to a 2.1 degree may reduce the number of applicants, but does not necessarily mean that those with lower degree classifications or non-degree qualifications are less able to demonstrate the necessary intellectual skills to be successful as a barrister. Therefore an alternative method of selection for the BPTC may be more appropriate.

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?

31. In order to more accurately select individuals who have the necessary skills to become successful barristers, it may be more appropriate to increase the requirements of the BCAT and use this as the selection tool for the BPTC. This would no more restrict access to the profession than would the requirement for a 2.1 degree, it would simply restrict access on the basis of suitability through skills assessment in the same way that the minimum degree classification is intended to do for intellectual ability. Using a rigorous selection process at this stage would ensure that those with the right aptitude to succeed would be the ones taking the BPTC.

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

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

32. CILEx does not offer an opinion on the content of the BPTC.

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

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?

33. CILEx does not offer an opinion on the quality assurance and assessment of the BPTC

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

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?

34. None identified.

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

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

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

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

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

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

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

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

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

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

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

35. CILEx does not offer an opinion on which approach would be the most appropriate for the vocational stage of barrister training, other than to state that focussing on the outcomes of the training is likely to enable alternative routes to qualification to emerge which are able to produce high quality barristers.

36. In terms of equality, diversity and social mobility issues, it is clear that the gamble taken by individuals embarking on the current qualification structure is likely to be off-putting to those unable to afford to risk £18000 when the chances of progression are small and the wider currency of the resulting qualification is very limited. Although, it should be noted that CILEx does recognise the QLD and BPTC as an alternative route to become a Graduate member of CILEx and offer a route to qualification as a Chartered Legal Executive once the individual can demonstrate the requisite amount of work experience.

Pupillage:

37. CILEx has not provided answers to each of the questions in this section as it is not best placed to make comments relating specifically to the work placed training of barristers, but it has provided some general comments.

38. CILEx notes that there may be more work to be done to encourage the availability of pupillages at the employed bar, possibly through simplification of the requirements to become an accredited pupillage provider. More could be done to enable opportunities to undertake pupillage on a part-time basis and to encourage the use of shared pupillage schemes which would enable employers/chambers in narrow areas of practice to offer pupillages in conjunction with other organisations which would offer sufficient breadth to complete the training requirements. CILEx considers that each of these developments would have a positive impact on diversity at the bar.

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?

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?

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?

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?

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

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?

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

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

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

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

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

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

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

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

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?

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

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

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

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

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

Key Statistics

QI1: Do you agree that the BSB has this responsibility? If not, why not?

QI2: Are there other categories of information you think we should collect and analyse? Please explain briefly why.

QI3: Are there any categories of information we ought to collect, but that we should not publish, even if under relevant legislation we have the choice whether to do so?

39. CILEx has provided a single response to this series of questions. We agree that it is part of the role of the regulator to provide accurate data and statistical analysis to provide consumers of education and training with a realistic summary of past data in order that informed choices can be made in relation to their future.