

**Response of the Bar Association
for Commerce Finance and Industry (BACFI)
to questions posed in the
Interim Report of the Entry to the Bar Working Party**

Introduction

BACFI welcomes the fact that the working party has been set up. This submission aims to answer the questions from the perspective of the bar as a whole. In this regard it is suggested that reference should be made to the employed bar in the final report where relevant, for example in 1(1) and 2(2)

A. The School Stage

1(1) In answer, the Bar Council directly and through other representative bodies including Bar Associations should contact schools directly and by way of general notices on the websites with a view to speaking directly to careers staff as at 1(2) and 1(5) with a view to arranging 1(2), 1(3) and 1(4). BACFI believes that the proposals at 1(6) would be more effective at degree CPE and BVC stages.

B. The Degree and CPE Stages

2(1) Agreed, as at 1(1).

2(2) Careers officers should be invited to participate in centralised 'training' in what the Bar has to offer as a career. Such training should be regarded as an important event by the Bar Council at which the Chairman of the Bar should preside. He and other appropriate members of the Bar Council, both Secretarial and barristers should meet the careers officers. The meeting should however be educational and not social alone. See answer to 3 below. Such meetings should take place annually and be followed up periodically during the year, electronically and in writing.

It is acknowledged that there will be a financial cost. However, the bar must be educated in the need to pursue such ventures if it is to survive as a body of excellence.

3(a) Students should be informed of the actual figures for success and failure to obtain pupillage and tenancy say for the previous five years taking account of "foreign" students. They should include the factors at (b).

Students should be told clearly and specifically of what the effect is for failing at the pupillage or tenancy stage and how it might affect their career prospects.

The Bar Council must educate the provider so that they give the above information to students. This is a function of 2(2) above. One problem to be addressed is that it may not be in the economic interests of the providers to emphasise the difficulties of obtaining pupillage or to raise the standard of entry.

- 4 Offers of pupillage should be made before students are committed to paying for the BVC. It should not however be made an entry requirement for BVC that a pupillage has been offered. To facilitate this the providers must be in line with a Bar Council timetable. Naturally this would have to be discussed with the providers.

C The BVC Stage

- 5 Neither

- 6 BACFI does not agree the numbers should be artificially increased. But an increase should not be discouraged if there are applicants of sufficient standard. The standard should not be lowered. Steps would be required to attract more candidates of a suitable standard. BACFI does not agree that there should be a limit but if one were to be imposed it should be as in the answer to 8(3) and raising the pass level.

- 8(1) The Bar Council

- (2) By wide consultation with all sections of the bar

- (3) A standard should be set at which a trainee barrister should be able to obtain a pupillage. Selection for entry to the BVC Course could be made way of an entry examination. It is for instance used for entry into the Civil Service. There is anecdotal evidence from our members who work for providers that some BVC students are not of sufficient calibre to obtain a pupillage whatever form it may take. This will have to be balanced with encouraging entry from wider backgrounds.

- (4) The only justification can be the public interest which is to maintain the standard of the profession.

- 9 By a combination of (1), (2) and (3) and the proviso

- 10(1) No

- (2) This opens a wider question. BACFI has on a number of occasions, in the Tuckey and Richards committee for instance, advocated that there should be alternative way of completing barrister training. Please refer to answer 21 where this is expanded.

- 10(3)** No but the standard should be maintained, see 8(3)
- 10(4)** Only if a provider fails to maintain a suitable standard
- 10(5)** Yes
- 10(6)** See answer to 10(2).
- 10(7)** No, at best it would be window dressing.

Although strictly not an answer to the questions posed at 10 consideration should be given to working with the Law Society to provide common basics so that if a student was unable to obtain pupillage in any form it would be easier to transfer to train for a solicitor.

- 11** Probably but we have insufficient information to give a full answer.

D Finding the Vocational Stage

- 12** The market will find its own level as it changes.

13(1)(2)(3) & (4)

Demand will vary with economic cycles. It would be impractical to attempt to set a number.

For practical reasons it would not be impossible to make employers pay directly. It should be noted that in many cases employers pay the employed barrister's Bar Council subscription. There is a danger if these become too high the employer in commerce, finance and industry will either employ a solicitor or contract out the work

- 14** Yes

- 15** Yes. Funding should be aimed to help those in greatest need.

- 16-19** BACFI is not aware of what funds are available from The Inns. In general BACFI opposes loans which will have to be repaid when the student reaches an earning threshold, post qualification 19(2)(a). A non-repayable grant would be preferred. However, loans might be the only realistic method of using available funds.

As to interest, 19(2)(b) and (c) the less pressure on the student the better therefore interest free or low rate until repayment is due or as suggested in 19(3) as a last resort. The final answer will naturally depend on what funds are available and how many students there are.

As to new methods of funding the only practical method would be through an increase in Bar Council subscriptions. It is unlikely that the Inns would wish to relinquish control of their funding and why should they? Any new scheme would require close co-operation between the inns and Bar Council to facilitate the administration of one scheme.

E The Pupillage Stage

20 No. Good candidates and late developers are lost to the profession.

21 Yes. We refer back to the answer to 10(2).

There should be alternative types of pupillage or training for barristers. They should be of equal standing. The current form should be maintained although the incorporation of a part or all the first six months into the BVC should be considered. If this were to happen there should be a requirement that some period of that time should be spent in the legal environment where the student proposes to practice.

A further alternative form of pupillage or training would be for the full twelve months to be based with a BVC provider.

It would be of a modular type where targets are set. The trainee would spend time away from college in various suitable legal environments in the same way that pupils may currently spend time away from their pupil supervisor.

Whilst this latter form of training would equate to twelve months it is envisaged that it could and in many cases would take longer to complete subject to an overall time limit and standard. It would open up the possibility of part-time pupillage and give the trainee an opportunity to earn money to fund their pupillage.

Such alternative forms of training would have the benefit of increasing the number of BVC graduates who would obtain a full practicing certificate. In particular it would help minority and disadvantaged groups by enabling them to spread their qualification period. If rules on non-bar earnings were to be relaxed, see answer 25, it would assist those from such groups in funding themselves and so open the bar to more diverse backgrounds.

22 Probably not.

23(1) Some chambers may be unable to afford this and a pupillage may be lost.

(2) This depends on their resources and how they should be best used. For instance it might be considered better to fund BVC students rather than pupils.

(3) No, any income from this source would be unpredictable.

(4) Presumably this would involve some form of loan guarantee and payment of interest scheme. As with 23(2) it depends on how it is thought best to distribute the available funds.

(5) This is impractical and would be impossible to implement. It would indirectly impose a list of whom a barrister could be employed by excluding those who did not pay. This would be anti-competitive and against the national interest.

24 This question presupposes that the present form of pupillage will continue unchanged. However, if changes are made the alternatives will equate to a twelve month pupillage. In principle the first six months should be non earning from the bar.

25 Yes

F The first three year stage

26 No. We believe it could well lead to a reduction in tenancies and possibly pupillages which precede them.

Our comment on 26(3) is that many employed practitioners in industry and commerce start on low salaries. This is in part because their training has been lacking in the practical application of law in the commercial world.

G The Retention Stage

27 There must be a point when any new practitioners have to make their own way as in any walk of life. There must however be continued meaningful education to ensure that the profession is aware of the difficulties faced by those identified in the question and allowances made for their difficulties whether in Chambers or employment.

One practical way of helping some at least would be to relax the rules on earnings from other sources.

H General

28 We have made suggestions in replying to various questions.

29 Many barristers do welcome those from diverse backgrounds. Regrettably those who do not, even if unintentionally, are the ones

whose signals are seen and heard and remembered. When today some self employed barristers still regard those in employment as second best it is difficult to say how prejudices about minorities can ever be overcome. Education of the bar as a whole must continue in this regard so that the correct signals are sent out.

The proposals set in answer 21 would be a practical way to demonstrate that the bar is willing to accommodate those from diverse backgrounds and groups.

The answers to the questions at A and B are relevant to the ways in which the image of the bar can be enhanced to a wider area of possible entrants.

Data Requirements

BACFI is unable to respond to the questions. It would be helpful to have more data. One potentially helpful item would be the number of organisations which have applied for PTO status during the past five years and the number accepted.

