

RESPONSE OF THE BAR ASSOCIATION  
FOR COMMERCE FINANCE & INDUSTRY (BACFI) TO THE  
BSB CONSULTATION PAPER ON  
DEFERRAL OF CALL TO THE BAR

1. BACFI opposed deferral of call when it was first proposed and until 2004 when it gave limited support subject to a review of the training regime. Its objection has been founded on the consequential adverse effect deferral would have on those who are unable to obtain a twelve month pupillage a large proportion of whom hold legal posts in employment. There is the additional problem caused to those overseas students who propose to practice in certain foreign jurisdictions. BACFI is aware that deferral could proceed. If it does then it must only do so in parallel with a new regime of in-service training. Such regime must give an opportunity to be called to all successful BVC students. The overseas student problem must also be resolved. It is against the above background that BACFI answers the questions posed in the Consultation Paper and summarised at paragraph 58. BACFI continues its limited support which must be subject to a firm commitment to restructure the in-service training regime.

2. Question 1

The statement that the public is entitled to expect that a person who has the professional name "barrister" has completed all the necessary training to practice under that professional qualification holds attractions. That said, and the consultation paper asks for evidence, what evidence is there that the public do expect this? Anecdotal evidence from everyday life suggests that a large part of the public refer to persons who act for them legally by the generic term "lawyer". This is whether they are a legal executive, a solicitor, a barrister, a trainee or a paralegal. As long as a client is told what a particular person can or cannot do for them such anecdotal evidence tends to suggest that they are content.

3. The fact that the bar is out of step with all other professions in regard to the date of qualification does not necessary mean that the bar is wrong. It is different because of its own particular needs. It does not follow that it is against the public interest for it to be different.

4. The case against deferral of call to the Bar in the Consultation Paper under i) Recruitment and Diversity correctly summarises views put forward by BACFI over time.

5. In answer to the Response at paragraph 34 of the Consultation Paper whilst it is accepted that deferral would not make any difference to the number of pupillages available this argument is irrelevant. BACFI has always held a strong suspicion that a sub text to the stated reasons for deferral has been to cut the number of students entering the BVC course. This would ultimately equalise those completing it with pupillage availability without increasing pupillages or creating other opportunities for in-service training. The final sentence of paragraph 34 might be read as giving expression to this. It does not answer the Recruitment and Diversity objection. It does not follow that those students who may be deterred would be academically, vocationally or temperamentally less suited to the bar.

6. BACFI does not in principle object to selection by Chambers (ii) as expressed in paragraph 35. Competition for a particular pupillage either in chambers or in employment is healthy. The problem is one of a shortage of pupillages. However, it must be ensured that all candidates for a pupillage are treated equally and in compliance with a set of BSB rules.

7. BACFI fully supports the objections to deferral raised at iii) Overseas Students. The objection would fall away if an acceptable alternative could be agreed with their home regulator prior to the introduction of deferral.

#### 8. Question 2

The Status of Pupils has always been a problem for advocates of deferral. If the object of deferral is to ensure that a client is represented by a fully qualified barrister why should someone who has only completed half their in-service training be able to represent them? The logical answer is to withdraw the right to practice as a 'barrister' until pupillage or in-service training in whatever form is completed. There would then be no requirement for some different title. Such a course would be to the detriment of the pupil, and his or her employer or chambers.

9. BACFI however proposes an alternative to the existing form of pupillage to obtain the necessary qualification for call see paragraphs 14 to 18 below. Under those proposals it would be necessary to allow a pupil or trainee to practise say at an equivalent stage of their training to the completion of the first six months. BACFI is in favour of the status of a provisional qualification at that stage.

10. BACFI agrees that the term 'pupil' is not appropriate for the 21st century. "Trainee" would be a suitable and understandable alternative.

11. It is in the public interest that a client should know they are employing or are being represented by a trainee. The title 'trainee barrister' would seem appropriate. It would equate with trainee solicitor. The employer or client should be informed of the status. The BSB should devise an explanation which should be given to the employer or client if it is asked for. It is not envisaged that this explanation should be formal or humiliating but the rules would set out what information should be given.

12. Question 3

It would not be unreasonable to assume that students who embark on the BVC course do so with the intention of practising at the Bar as self employed or employed barristers. Some may drop out, or fail the course but the overwhelming majority will seek a pupillage. If pupillage in its present form together with an alternative form of training were to provide an opportunity for all successful BVC students to complete their in-service training then there would be no need to create a new qualification for those having the benefit of such opportunity. The minority who did not wish to seek to be called would unfortunately have wasted a year in so far as a qualification is concerned. This would apply whether deferral takes place or not.

13. There are however a substantial number of people who have completed the BVC but have not been able to complete a pupillage formerly known as non-practising barristers. They should be given the opportunity to qualify by an alternative form of in-service training see paragraphs 14 to 18 below. It may not be practical for all such persons to undergo such training possibly many years into their career and holding senior positions. BACFI proposes that they should be allowed to use the title "barrister" and if the need should arise to give an explanation similar to that under paragraph 11 above. Over the years the numbers involved will decrease by natural wastage.

14. Question 4

BACFI has given a wide interpretation to this question. It has already alluded to the position of what were known as non practising barristers, a class which largely arose because of the ever increasing shortage of pupillages. BACFI was represented on and made submissions to the Richards Working Party set up by the Bar Council to enquire into the position of non-practising barristers called since 31 July 2000. It made submissions to Richards that there should be alternative methods of in-service training to pupillage of the type set out below.

15. BACFI submits that the BSB, the Bar Council, the Inns and the BVC providers in consultation with appropriate bodies, including BACFI, should devise the new regime for in-service training.

16. It is probably not appropriate or indeed feasible to attempt to outline in detail the form of the alternative training. However, in other professions a 'sector skills' approach is commonly used.

17. This approach would

- (i) specify the full range of knowledge, skills and performance needed for a particular job,
- (ii) turn those requirements into tasks, backed up by measurable performance criteria, and
- (iii) specify the evidence required for each performance criterion.

It is suggested that different skills could be acquired in different training environments and that credits, awarded for particular types of experience on a predetermined scale, could be built up over a period, subject to assessment by senior barristers or others with experience of the particular task involved against specified criteria.

18. The Report of the Richards Working Party is in draft and as at 10 November 2006 is subject to final agreement by its members who represent the Inns, BACFI and the Bar Council. The initial recommendation is that an alternative qualification procedure should be devised and considered for acceptance. BACFI is broadly in agreement with this but is of the view that the word 'qualification' may be misinterpreted. There should be one qualification but alternative ways of obtaining it.

19. Question 5

BACFI submits that an alternative form of in-service training to pupillage must be in place if deferral is implemented. This will inevitably take time to set up and would delay the implementation of deferral as currently envisaged by the Bar Council resolutions of 16 July and 18 September 2004. Those called before implementation of deferral and the alternative training who do not complete a pupillage should be able to describe themselves "barrister". If they do they should be subject to registration and control by the BSB.

Stephen Bacon  
Chairman  
BACFI

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