



Comments on Draft Pupillage Handbook

BACFI welcomes the opportunity to comment on the draft Handbook as it applies to the private commercial sector of the employed bar. It remains our aim to increase the number of pupillage opportunities in this sector as we outlined to the Pupillage Review Working Group. We have therefore taken the opportunity to comment also on some of the conclusions from the Review.

General

1. We were disappointed that the Pupillage Review has not taken the opportunity to take a more radical approach to professional training for a career at the modern Bar. The traditional pupillage structure may work well in chambers but it is not easy to incorporate some of the requirements into a corporate structure. The possibility of alternative training regimes (as suggested by the Richards Report) was dismissed in one paragraph (426) of the Report of the Review (“the Report”) without debate. Even the title “pupil” does not sit well in an employed context. We would have preferred “trainee barrister”.

There are few changes proposed to the pupillage system to encourage more employed pupillages. The view seems to have been taken that there is no requirement for a significant increase in the number of pupillages because there are not the follow-on employment opportunities. This may be true of tenancies at the self-employed bar but it is certainly not the case in the commercial sector of the employed bar. Some evidence is provided in the Report (Table 10 on page 42 of the Report) of employment opportunities for employed barristers. It is not clear how these numbers have been arrived at. We know from the evidence we provided to the Review that there is a demand from Heads of Legal for barristers in legal departments. This would not necessarily be reflected in job advertisements as companies would advertise for lawyers rather than for barristers. Also we know that many companies which train solicitors would also like to train barristers to provide for future requirements in their department. Furthermore there are many thousands of non-practising barristers working as paralegals in law firms and companies many of whose employers would be very willing to train them to full practising status. Although such barristers cannot provide reserved legal services, it is surely in the interests of the Bar to encourage them to acquire full status and be thereby properly regulated. This is a point we have made to the Authorisation to Practise Working Group.

The Report states (para 417) that many organisations employing practising barristers currently meet the criteria to become an ATO and implies that this will equally apply to the new business structures employing lawyers. We do not believe this to be the case for the commercial sector and our view is that new business structures (unfortunately) are not likely to create more pupillage opportunities.

2. The Handbook is an admirable compendium of information but there is much duplication which tends to detract from its usefulness. It is not clear in many places what is mandatory and what is guidance. It gives little recognition to the employed bar and, without some specific qualification, could deter a commercial organisation from even considering applying to be an ATO, particularly as it contains guidance on training, supervision and assessment etc which would be automatic in most commercial organisations.

3. We are disappointed that there does not appear to have been an examination of how other related professions (particularly solicitors) approach training. Whilst there are many unique features of training for the Bar nevertheless best practice from elsewhere can always be useful.

4. There are a few references in the Handbook to the “independent bar” which should read “self-employed bar”.

Specific comments

Section 3 – Authorisation as an approved ATO

There appear to be no changes proposed to simplify and streamline the authorisation process to meet the criticisms raised by commercial organisations wishing to take pupils. Our experience of the approval system is that it relies on form over substance requiring the organisation to fit their training scheme into the rigid criteria. For example, an organisation that has Investors in People accreditation is still required to provide all its HR documents in the form demanded by the Qualifications committee. This results in many hundreds of pages being copied and supplied to members of the committee. Perhaps the guidance could be amended to allow a company to provide a summary of its employment arrangements.

Many larger legal departments will have a legal training programme for solicitors and would like also to train barristers. To require completely separate documentation for all aspects of training is burdensome and unnecessary. Some flexibility should be introduced so that there could be a generic training programme for lawyers with extra provisions for barristers.

There is a proposal in the Report (para 116) that BTR 37 is amended to give a discretion to the BSB re approval of ATOs. We are most concerned that this will reduce certainty and will deter applicants. We cannot see the problem with BTR 37 as it stands and there is always the option to withdraw authorisation if there are any breaches.

We note the comments in the Report (para 114 and 116) about the higher rights requirement for supervisors. Although the Report offers the possibility of waivers there is no guidance as to the criteria which may be applied. As we have pointed out in the past, commercial organisations are not going to be prepared to put in an application unless they know that they can meet the requirements. Past experience indicates that waiver applications have been granted only on a very restricted basis and often with a considerable delay.

It is not clear whether the Director of Pupil Training needs to be a barrister or whether it could be a solicitor, an HR person or the second lawyer who will assist with supervision. In a small legal department training would normally be the responsibility of the Head of Legal and if this person is a barrister then they would probably be the Pupil Supervisor. Some clarification is required and some flexibility for small departments needed.

In the Review there is a comment (para 120) that there is no definitive list of ATOs at the Employed Bar and that one company which is represented on Bar Council committees is missing. We take this to be General Healthcare. We are puzzled about this as until recently there has been a list on the BSB website listing some 31 ATOs at the Employed Bar. As part of our evidence gathering for the Review we contacted all 4 commercial organisations on the list and only one (General Healthcare) is currently taking pupils. Contrary to the numbers quoted in para 120 there are 11 firms of solicitors on the list, many of these recent appointments. We agree that there is a need to record those organisations which are actually taking pupils. The list needs to be re-instated on the website as BACFI has found this useful in dealing with several enquiries from those looking for an employed pupillage.

Section 4 – Supervision of pupils

Para 4.4.5 Some of these requirements will be part of a company's normal procedures (e.g. assessment, appraisal, equality and diversity). It is important that prospective supervisors at the employed bar are not deterred by discussion of these basic requirements and also that there is a recognition that such matters must also reflect the company's own policies and culture.

Section 5 – Applications, Admission and registration of Pupils

As we pointed out to the Review, employers often wish to train existing employees. Although waivers from the advertising requirements can be applied for, the statement that waivers will only be granted in exceptional cases is not encouraging. If the employee has been with the company some time it may be difficult to prove that the employee was originally engaged in open competition. We feel that the Handbook should state that, provided the employee was originally engaged in open competition, a waiver will normally be granted and that a statement from the company to this effect should be sufficient.

A further problem with advertising may arise where a company wants to advertise for legal trainees and will wish to select either barrister or solicitor trainees. Advertising for such vacancies on pupillages.com may not be appropriate.

There is a statement in the Report (para 163) that at the employed bar applications are handled in accordance with normal recruitment procedures although in para 190 it states that the requirement re offers applies to all ATOs. It is thus not clear what applies to employers.

The requirement in 5.1 for a closed period for offers would be impossible for companies to operate. The same comment applies to 6.7.4/6.

Para 5.9 deals with various applications which may be made to the Qualifications committee. The committee and its panels deal with many hundreds of applications and it is felt that there could be some automatic approvals particularly for external training and secondments rather than each individual placement having to be separately approved. This would be in keeping with light touch regulation.

We strongly support the view that part-time pupillages should be made available – this should be advertised and again there should be a presumption of approval and guidance provided as to what is acceptable.

Sponsored pupillages (as per para 421 of the Report) should be mentioned here and also encouraged.

For those matters which come within the ambit of the Qualifications committee it would be helpful to append the Guidelines in an Appendix.

Section 6 – Recruitment and selection

6.4.1 Selection procedures in commercial organisations must also have regard to corporate policies

The current Pupillage Guidelines (p28/29) contain guidance on dealing with applications from those who have had a reduction in the period of pupillage granted by the Qualifications committee. This is referred to in para 58 of the Report. Although this is not an issue peculiar to the employed bar we think further guidance should be given in the Handbook under 6.4.2 to ensure that these applicants are not disadvantaged if they need only a shorter pupillage which may not fit with the chamber's systems. We would like to see some evidence of how many of these "reduced pupillage" applicants actually obtain a pupillage.

Section 7 – Funding and financial matters

In 7.3.4 it should be noted that some employers self-insure and that this is acceptable.

Section 8 – Standards and the Curriculum Framework

In the penultimate bullet point there is a reference "register as self-employed within 3 months of commencing second six". We assume this does not apply to the employed bar.

Section 10 – Core and Specialist Knowledge and Skills

In our evidence to the Review we commented on the need for alternative checklists at the employed bar where little front line litigation is undertaken. We produced an alternative checklist kindly provided by General Healthcare as a suggested model for commercial organisations. We would like some acknowledgement that this has now been accepted for use.

Also the use of checklists/ knowledge and expertise requirements needs to fit in with the overall training scheme for the particular company.

As a general comment section 10 seems to contain much duplication and needs to be read in conjunction with Appendices H and I.

Section 11 – Compulsory courses

There should be an option for employed pupils to do forensic accountancy in-house. All in-house lawyers need a good understanding of accountancy principles and unless they are going to be engaged in front line litigation, much of the standard course will be irrelevant. Even if they later move to the self-employed bar it is unlikely they will have remembered most of what they learnt on the course.

Section 14 – Support and Advice for Pupils

14.8.2 refers to secondments from the employed bar to chambers and cross refers to 6.8.1 which does not exist.

14.11.3 re a career in employed practice, should refer to us as the Bar Association for Commerce Finance and Industry.

Section 16 – Quality Assurance Procedures

There is a cumbersome committee structure which could be streamlined. In particular all matters concerning pupillage should be dealt with in the same committee. There is a concern that the BSB is becoming over-bureaucratic and as the profession has to pay for the costs, this is something which should be watched.

Appendix J

There is reference earlier to the Dutton criteria and this appendix appears to cover the assessment on the pupillage advocacy course. This should be distinguished from the Dutton definition of advocacy with which most practitioners are familiar.

**BACFI
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