

Review of public access training

Executive summary

1. This paper sets out the Standards Committee's working group's recommendations following a review of the current public access training course. In setting out these recommendations the working group has sought to ensure that those who complete the public access training course will be able to demonstrate the knowledge, understanding and skills required to practise competently in this area. It also sets out further changes to the Public Access Rules contained in Annex F2 of the Code of Conduct, which are required for the implementation of the working group's recommendations.
2. The working group recommends that:
 - a) The new Public Access Training Outcomes, as detailed at **Appendix 1**, are introduced.
 - b) Course content and training delivery should not be prescribed by the BSB, but should be left to the training providers to develop. Providers will, however, need to satisfy the BSB that their course addresses the identified risks and achieves the required learning outcomes as detailed in **Appendix 1**.
 - c) Assessment at the conclusion of the course should be a mandatory requirement. The method of assessment should not be imposed by the BSB, rather training providers will be required to develop their own assessment techniques.
 - d) Training providers will be required to apply to the BSB for approval to deliver the new public access training course. To assist trainers with applications, the BSB will publish guidance that provides examples of, amongst other things, the learning approaches, resources, assessment arrangements and course duration that the BSB would expect to see in a successful application (please see **Appendix 2** for full details).
 - e) The Education and Training Committee should be responsible for considering and approving applications. The Education and Training Committee may seek advice from any other BSB Committees when considering applications.
 - f) Successful applicants will be appointed under a contact for services, similar to the existing contracts for BPTC providers. The contracts will be time limited to three years. At the end of the three year period training providers will be expected to renew their application to the BSB, if they wish to continue providing the course.
 - g) Training providers will be charged an application fee that will be calculated on a full costs recovery basis.
 - h) Quality assurance measures will be put in place to ensure consistency of training and standards across the providers. These include:
 - i. A requirement that all training providers must submit an annual report to the BSB. The reports will set out the findings of their internal quality assurance arrangements (including any complaints or issues raised by barristers attending the course), comment on how teaching and assessments have

functioned, set out what changes, if any, will be implemented to rectify any issues that have been identified and identify any significant changes to the arrangements under which the provider was approved.

- ii. An external examiner's report on the conduct of assessments and the standards applied in assessments. The BSB will reserve the right to review teaching and assessment arrangements if it receives any credible evidence that raises concerns about the standards of teaching or assessments.
 - i) Transitional arrangements should be put in place to ensure barristers who have undertaken the existing public access training complete an appropriate training course, or apply for a waiver, within 24 months of the new course being made available.
 - j) All barristers who have not already undertaken the training should be required to undertake the new training course before being permitted to undertake public access cases. Barristers who are under three years' standing, and who have already undertaken the training (in anticipation of being able to undertake public access work), will be required to undertake the top-up training before being eligible to accept public access instructions.
 - k) All barristers under three years' standing who are eligible to undertake public access cases will be required to keep a log of public access cases that may be inspected by the BSB.
 - l) Guidance will be amended to make it clear that the BSB expects all public access barristers to undertake sufficient CPD to keep their skills and knowledge up to date.
 - m) A list of approved providers will be published on the BSB's website.
3. In order to manage the transition from the current training courses to the new training courses, and to ensure that the impact of allowing barristers with less than three year's call to undertake public access work can be monitored and reviewed, further amendments are required to the Public Access Rules set out in Annex F2 of the Code of Conduct..
 4. Should the recommendations be approved the next steps and timeline are envisaged as follows:
 - rule change application made to LSB in January 2013;
 - LSB approval received in March/April 2013;
 - a meeting with current and potential providers is held in March/April 2013;
 - applications are received and processed between April and September 2013;
 - new courses are put in place as when they are approved and no later than September 2013; and
 - the impact of rule changes and revised training is reviewed in January 2015

Background

5. At its July 2012 meeting the Board agreed that the following prohibitions should be removed from the Code of Conduct:
 - a) barristers with less than three year's call cannot accept public access instructions, and
 - b) barristers cannot accept public access instructions where the lay client may be eligible for public funding.
6. Newly qualified barristers provide a rich source of legal expertise at an affordable cost and, given the rules in place in the Code to mitigate concerns about their relative lack of experience and competency, the prohibition was considered disproportionate.
7. The legal aid rule was considered to restrict choice unnecessarily and to affect access to justice adversely because clients may not wish to apply for legal aid or to accept it due to the expected level of contribution. In addition, clients may live in an area where few or no solicitors offer a publicly funded service.
8. In March 2012, the BSB surveyed public access barristers asking a series of questions about their practice and the current training. Feedback from this survey indicated that some public access barristers considered that the current training could be improved particularly in respect of dealing with vulnerable clients and identifying when it was in a client's best interests to instruct a solicitor. The Standard Committee, in co-operation with the Education and Training Committee, established a working group to conduct a full review of the public access training course and to make recommendations concerning the course, specify any changes or amendments necessary to enhance the course and further the regulatory objectives of the Legal Services Act 2007¹. The working group's terms of reference focussed on:
 - a) Regulatory aspects - whether the training promotes the regulatory objectives and, in particular, whether the interests of clients (particularly vulnerable clients) are properly protected;
 - b) Content and delivery - take account of any regulatory risks that have been identified, consider whether the course adequately equips barristers to identify and manage vulnerable/difficult clients and whether training on legal aid should be included; and consider what form of assessment, if any, would be appropriate;
 - c) Operational issues - frequency of the course, teaching and learning resources and the application process for appointing trainers;
 - d) Quality assurance – the arrangements that should be put in place to ensure consistent standards are delivered.
9. BSB staff met with the lead officer from the Legal Services Consumer Panel and the BSB's own Equality and Diversity Adviser to seek comments on the proposed approach. BSB staff also held initial discussions with colleagues from the Legal Service Board who were keen to understand how the risks associated with allowing newly qualified barristers to conduct public access work might be mitigated.

¹ Full terms of reference are available on request.

10. In considering public access training the working group has been mindful of its terms of reference, and the issues identified by the LSB and the Legal Services Consumer Panel. Consideration was given to other training and assessment models in order to identify features that could be introduced to public access training to provide further assurance that those undertaking such work would have, and continue to demonstrate, the knowledge, understanding and skills required to conduct public access work competently.
11. The working group's recommendations were considered and approved by the Standards Committee at its meeting on 31 October 2012. Because the working group is proposing that responsibility for approving applications to provide the course and undertaking quality assurance arrangements should be overseen by the Education and Training Committee, the working group's recommendations were also considered by that Committee. Members of the Education and Training Committee approved the recommendations following its meeting on 27 November 2012, when the recommendations, amended to address issues raised and to include more detailed costing, were circulated electronically.

The Working Group's approach to the review

12. The concerns about risk, highlighted by the LSB, taken together with the desire to enhance the training model to ensure the protection of clients, have informed the working group's approach to the review. Accordingly, the working group's recommended way forward:
 - a) is strategic, focussing on outcomes designed to address identified risks associated with the changes to the public access rules;
 - b) sets out the required knowledge, understanding and skills that must be demonstrated in order to successfully complete the training;
 - c) avoids detailed prescription about the content and format of training and the structure of associated assessments; and
 - d) allows individual trainer providers to develop innovative ways of achieving the outcomes, thereby allowing competition between providers and affording choice to those seeking to undertake the training.
13. The recommended approach is therefore consistent with a move to a more outcomes and risk-based approach to regulation, reduces the need for unnecessary and complex regulations, and avoids setting out detailed content or assessment requirements. Setting out the required outcomes in this way allows the establishment of a minimum standard of behaviour through training that will mitigate the identified risks. This approach is therefore in line with the better regulation principles, which require regulation to be imposed in a proportionate way.

Content, delivery and operational issues

14. The working group recommends using a set of outcomes to specify the required knowledge, understanding and skills, which will be expected of those who successfully complete public access training. A set of proposed outcomes is attached at **Appendix 1**. These are directly referenced to risks associated with the proposed rule changes and take, as their starting point, the intended learning outcomes currently provided to potential training providers in the application pack. The current learning outcomes

have been adapted slightly to ensure that they are consistent and coherent.

15. The LSB were particularly concerned to understand what risks were posed by allowing newly qualified barristers to undertake public access work and how these would be mitigated. The working group considered that the identified risks and their impact on consumers are the same, regardless of whether or not the individual is experienced or newly qualified. However, the likelihood of the risks materialising is increased when the individual concerned is newly qualified, because they do not have as much practical experience as colleagues who have been practising for a number of years. Thus, the proposed outcomes are designed to ensure that all who successfully complete the training will have the minimum necessary knowledge, understanding and skills to work safely and effectively in this area.
16. The intention is that the outcomes will provide sufficient detail about what is required to successfully complete training to:
 - a) inform barristers who are contemplating undertaking public access work and doing the training; and
 - b) allow trainer providers to develop training and assessment models to deliver the required outcomes.
17. The benefit of this approach is that it does not involve the BSB prescribing the content and format of training, its frequency and duration or the form that assessments must take. The focus on outcomes will allow providers to innovate and develop a range of formats designed to meet the outcomes and thus encourage competition between providers.
18. It would also allow providers to develop shorter refresher and top-up courses that could be offered to practitioners to contribute to their CPD or to ensure coverage of the new training outcomes for more experienced practitioners. If providers provide different models this would present individuals with the opportunity to choose a course more in tune with their own approach to teaching and learning, or their level of experience.

Quality assurance issues

19. The working group is mindful that, by placing the onus on training providers to develop and offer appropriate training and assessments, there is a need to set out some quality assurance requirements to ensure consistency of provision and standards across time and between providers. It is therefore recommended that the following arrangements be adopted to facilitate consistent provision and standards.

Guidance for potential training providers

20. In order to provide training providers with further information about the new requirements for public access training the working group proposes that a meeting with existing and potential providers should be arranged. Such a meeting would allow the new requirements for public access training to be presented and provide an opportunity for potential trainers to develop their understanding of, and seek clarification about, the new requirements and the application process.
21. This meeting would be augmented by the provision of written guidance for potential trainers offering information about the following range of matters².

² Please see **Appendix 2** for the full guidance.

a) Expectations about the duration of training

The working group does not think it would be appropriate to specify precisely the number of days or hours that courses should be delivered over, that would be for providers to determine. However, it might be helpful to specify, as a baseline, the expectation that training would not normally be less than 12 hours duration. The working group considers this to be the minimum duration of time required to properly achieve the learning outcomes and assess trainees' knowledge, understanding and skills.

b) Guidance about the teaching and learning approaches and resources

Again, the working group does not think it appropriate to set down specific requirements, but it would be helpful to express the view that the learning outcomes will lend themselves to a variety of modes of delivery and teaching including formal teaching, role play and self-study.

c) Clarity about the range of assessment arrangements

The working group believes that the proposed outcomes will allow providers to develop a range of assessments that appropriately assess the outcomes, which could include multiple choice and short written assessments, assessed role plays and practical activities.

d) Clarity about dealing with vulnerable clients

Identifying and managing client vulnerabilities could potentially cover a very significant number of issues and the working group appreciates that it will be impossible to cover all aspects in a short course. It therefore suggests that, while providers should ensure awareness of all the protected characteristics set out in the Equality Act 2010, training courses should focus on those characteristics most likely to be relevant to public access barristers such as age, ethnicity and disability. Reference should also be made to the duty to make reasonable adjustments for those with disabilities. Providers will be expected to report annually on the number and type of reasonable adjustments they have made to ensure that candidates with a disability can complete the required assessment. In addition providers should ensure that trainees are aware of, and able to direct vulnerable clients to, support groups that can offer additional assistance and support.

e) Equality and Diversity considerations

The BSB is eager to ensure providers comply with various E & D requirements and will insist on seeing an E & D policy and the provider's reasonable adjustments policy. In addition, providers would be required to:

- i. analyse the equality impact of course materials and assessments;
- ii. confirm that those delivering training have had recent and appropriate E&D training;
- iii. monitor the take up of courses by equality strand; and
- iv. identify any under/overrepresentation of particular groups together with a plan for remedying such over/underrepresentation.

Approval of training and assessments

22. Training providers will be required to submit proposals for approval by the Education and Training Committee's CPD sub-committee³. As part of the application the providers will be required to set out how their proposed training and assessment arrangements will ensure delivery of the required outcomes. They will be required to set out the internal quality assurance arrangements that they will put in place to review training and assessment results, and to ensure that these remain fit for purpose.
23. Training providers will be expected to identify the independent external examiner they intend to appoint to review the conduct of teaching and assessment, and to report on the standards applied (criteria for use by providers when appointing external examiners are included in the guidance for providers). Providers will be required to provide evidence to demonstrate that the proposed individual has the expertise and ability to undertake this role and has no conflicts of interest that could bring into doubt their objectivity. The working group considered but rejected the idea of a BSB appointed external examiner. It would not be practical for one person to properly assess a range of different courses. Examiners will report directly to the BSB and the BSB will have the power to refuse an appointment if it is not, in the BSB's opinion, sufficiently independent.
24. Providers will also be required to set out the arrangements they will put in place to deal with any issues or concerns raised by trainees (including a facility for trainees to appeal against assessment results). Details of any issues and how they were resolved should be included in the provider's annual report to the BSB.

Top-up training

25. Current training providers will be able to submit an entirely new course for approval and/or an abbreviated ('top-up') course, which addresses aspects of the new learning outcomes not addressed by their current training and includes appropriate assessment. A tailored application form will be developed for use by providers who wish to offer a top-up course. As part of their application, providers will be required to undertake a mapping exercise to demonstrate how the proposed top-up course will augment their current training to cover all the required learning outcomes and provide appropriate assessment. We will also require providers to demonstrate how they will check that barristers taking this course have retained the knowledge, understanding and skills from the original training and/or any pre-course refresher preparation that will be required.

Duration of the transitional period

26. Following LSB approval, the working group considers that existing training providers should have up to a maximum of six months to develop new courses and apply for approval. The working group accepts that, post-LSB approval, there will be a delay in establishing the new training courses. Any delay will obviously affect those barristers wishing to undertake public access work that have not already completed the existing training. The working group is conscious of the need to ensure that clients and consumers are protected, and believes that any delay is likely to be relatively minor because training providers, keen to gain a competitive advantage, are likely to submit applications to provide the new course without delay.

³ A copy of the full application form is available on request.

27. The transitional arrangements affecting barristers who have already undertaken the existing training course are discussed in more detail at paragraphs 33 to 40 below.

Post-authorisation quality assurance arrangements

28. Once a training provider has been approved they will be required to submit annual reports to the BSB setting out the findings of their internal quality assurance arrangements, commenting on how teaching and assessments have functioned (including details of the number and type of reasonable adjustments made), identifying any significant changes to the management of the provider that may affect the provision of training, and what changes, if any, will be implemented to rectify any issues that have been identified. As above, this report should detail any concerns raised by trainees and how these concerns were resolved. This report will be read in conjunction with the external examiner's views on the conduct of assessments and the standards applied in assessments. The contents of this report will be published on the BSB's website.
29. The BSB reserves the right to review teaching and assessment arrangements if it receives any credible evidence that raises concerns about the standards of teaching or assessments. In the first instance, trainees will be encouraged to try to resolve any issues directly with the providers. However, if an issue cannot be resolved to the satisfaction of the trainee a complaint may be made to the BSB for consideration. The BSB may, in its absolute discretion, decide whether or not to investigate matters further and could potentially use any such complaint as the basis for a site visit or other action against a provider.

Post authorisation CPD requirements

30. Having completed the required training and registered with the Bar Council to undertake public access work, it will be important to ensure that barristers practising in this area continue to keep their knowledge and practice up to date. They will of course be subject to the general requirements relating to CPD.
31. The working group considered specifying an additional element of CPD by way of rule change. However, following discussions, the working group determined that the most proportionate way forward would be to explore amending guidance to expect individuals practising in this area to ensure that an appropriate proportion of their CPD is dedicated to public access work. This approach is more outcomes focused and would allow individuals to make decisions that are appropriate for them. The working group was also concerned that imposing additional CPD requirements by way of rule change would potentially lead to significant administrative burdens for the BSB, and this was not a proportionate approach.
32. Assuming the providers make the necessary applications to the CPD Department, the training course itself, and any top-up training undertaken, will attract CPD that can be counted towards a barrister's annual requirement.

Implementation and transitional arrangements

33. By December 2012, nearly 5500 barristers had undertaken the current training programme using one of the four existing approved training providers.
34. Any changes to the training course will need to be carefully handled. The working group believes that the ultimate position must be that anyone new to public access

work must first undertake the revised training and assessment programmes. However, in the shorter term the changes will affect three groups:

- a) Barristers who are under three years' standing and want to do public access work;
 - b) Barristers who are over three years' call and who have not already undertaken public access training at the point when the new arrangements are implemented;
 - c) Barristers who have already undertaken the training when the new arrangements are implemented.
35. Barristers under three years' standing clearly represent the highest risk. Before being allowed to undertake public access work all such individuals should be required to undertake the new training and assessment. (If any such barristers have already undertaken the current training in anticipation of the rule change, before registering with the Bar Council and undertaking any public access work they must first complete a training programme which includes assessment). In addition, as set out in paragraph 43c) below, newly qualified barristers will be required to keep a log of the public access cases that they have dealt with and, where possible and appropriate, seek feedback from their public access clients. This requirement is intended to ensure that the barristers reflect on and improve their practice. In many cases it will be helpful to seek the views of their clients, although in the case of criminal cases the barrister will need to judge whether seeking such feedback would be appropriate. This information will be considered by the BSB to determine whether any of the potential risks have materialised.
36. The next group pose a lesser risk (because of their general practising experience), but will not have any experience and therefore expertise in public access cases. It is therefore proposed that they should be required to undertake the new training course before being permitted to accept public access instructions.
37. The final group, which will be more experienced in this area of practice, poses the least risk. Barristers in this group should be required either undertake an appropriate training course within 24 months of the new course becoming available or apply for a waiver from the new training requirements. If they apply for a waiver they will be expected to demonstrate that they have current relevant experience and can demonstrate the required knowledge, understanding and skills.
38. The working group recognises that more than 5,000 barristers have already undertaken the existing training and consequently there may be a substantial number of waiver applications submitted for consideration. To limit the number of applications the working group proposes that detailed guidance be published that sets out the strict criteria that must be satisfied before a waiver will be granted. The criteria would require barristers to demonstrate their practical experience by providing details of:
- a) the number and frequency of recent public access instructions;
 - b) the nature of the cases undertaken via public access; and
 - c) any public access CPD or additional training recently undertaken.
39. The Standards Committee is currently considering how waivers should be handled in general and will discuss with the Qualifications Committee a new process that will be staff led and overseen by a committee. Any proposed changes to the current arrangements will be brought to the Board for approval.

40. To implement these transitional arrangements it will be necessary to make further amendments to the Public Access Rules set out at Annex F2 of the Code of Conduct to make it clear that:
- a) barristers must undertake appropriate training, which includes assessments, before undertaking public access work; or
 - b) barristers already registered with the Bar Council for public access work, must undertake appropriate top-up training or apply for a waiver within the specified period or cease to undertake public access work.

Post rule change implementation, monitoring and review

Purpose of monitoring and review

41. Following the implementation of changes to the public access rules and training, the changes will be monitored and reviewed to:
- a) ascertain the effectiveness of the changes made to training;
 - b) gauge whether, and to what extent, the risks associated with the rule change have materialised; and
 - c) identify any further changes to the training or rules that need to be considered.
42. The monitoring will not seek to supervise individual barristers' compliance with the new rules as the BSB does not currently supervise individuals for compliance with the Code. The BSB intends to maintain its focus on supervision at a chambers and entity level as it develops its risk-based supervision strategy.

Scope of monitoring

43. The monitoring will focus on gathering information about the impact of the changes made to the public access rules, together with the effectiveness of the new training arrangements. The monitoring will involve the following strands of work.
- a) Chambers and entity monitoring
Evidence gathering questions can be included in subsequent rounds of chambers monitoring. It is anticipated that there will be a round of monitoring in summer 2013. The questions will seek to identify, among other things, the extent to which public access work is undertaken within the chambers/entity, the amount of such work undertaken by barristers with less than three year's standing (if any), and the number and nature of any problems that have been identified.
 - b) Review and analysis of complaints
Complaints received in relation to public access work will be monitored to see if any trends or patterns are discernible and, in particular, whether complaints against newly qualified barristers are disproportionate. We are working with colleagues from the Legal Ombudsman to ensure that they collect and record complaints data at this level of granularity so that this can feed into our consideration of complaints data.
 - c) Tracking the experiences of barristers with less than three year's standing and their clients

In order to provide evidence that the regulatory objectives are met and any risks arising from this change are targeted, barristers with less than three year's standing will be required to:

- i. keep a log of the public access cases that they have dealt with and any issues or problems that have arisen; and
- ii. where possible and appropriate, seek feedback from their public access clients to assist them to reflect upon, and to improve, their practice.

The BSB will then review a sample of these logs to determine if any of the potential risks have materialised. The Code of Conduct will need to be amended to make it a requirement that newly qualified barristers maintain this log, up until they have three years' standing.

d) Review of public access training

Within 18-24 months of the changes being implemented a review of the changes to public access training will be conducted. This review will seek the views of providers and a sample of trainees to explore how well the changes have worked, how well prepared trainees are for public access work, whether assessment has improved training and any further changes or innovations that need to be considered.

Outcome of monitoring

44. The monitoring identified will provide data about the impact of the changes to the public access rules and training and, in particular, whether and to what extent the risks associated with the rule changes have materialised. The BSB will consider the outcomes of this monitoring and then be in a position to make evidence-based decisions about any further steps required to ensure adequate protection for the public and clients who seek legal services via the public access route.

Responsibility for the oversight of public access training

45. The working group believes that the CPD sub-committee of the Education and Training Committee would be the most appropriate body to approve applications from potential trainers. This sub-committee has the relevant educational and professional expertise to judge the quality of applications. However, the CPD sub-committee should, when considering applications, be free to seek advice on the merits of an application from the Standards Committee, the Equality and Diversity Committee and any other individual or body that it feels has relevant knowledge and expertise.

Training providers

46. Current and new training providers will be invited to make applications to offer the new training and assessments as set out in the outcomes and the guidance for providers. This will be an open and fair invitation to current and potential trainers.

Training programmes

47. The intention is that providers will be able to develop a range of training and associated assessments to meet the BSB's requirements as set out in the identified outcomes and to take account of guidance provided by BSB. The BSB will not specify required resources, teaching and learning approaches or forms of assessment. All providers will be expected demonstrate how their proposals will deliver the training outcomes and ensure that those who successfully complete the course and assessment are competent to undertake public access work.

Support for training providers during the application process

48. It is intended that the following steps should be carried out as part of the application process.

Step 1

When we submit our rule change application and training proposals to the LSB, current training providers and any potential providers who have expressed an interest in offering the new training will be sent copies of the papers. While the LSB considers the papers, training providers will be able to assess the proposed changes and begin to develop their new courses in anticipation of LSB approval.

Step 2

Following LSB approval, and in collaboration with colleagues from the Standards Committee/Professional Practice, hold a half-day session for current and potential trainers to explain:

- a) the reasons for the changes i.e. rule changes and application to LSB;
- b) the nature of the proposed changes i.e. outcomes based with parameters about the range of programmes and assessment we might expect to see;
- c) the application process and timeline; and
- d) provide the opportunity for providers to ask questions/seek clarification.

Step 3

Existing training providers will be invited to make an application within six months of LSB approval. The current training courses will not be valid after this six month window. This period should allow trainers to make changes to an application in the light of feedback from staff or the CPD sub-committee. To support this process:

- a) an application form and process will be designed in collaboration with the Professional Practice Team;
- b) staff will be responsible for processing applications and ensuring that they suitable for consideration by the CPD sub-committee;
- c) the CPD sub-committee will be responsible for approving applications, drawing on additional expertise and advice as necessary;
- d) providers will be appointed under contract to offer training and assessments for three years, following which they must re-apply to continue to offer the programmes.

Quality assuring training

49. Following approval, trainers will be expected to submit annual reports as detailed above. These reports will need to be considered by staff and serious issues/matters reported to the CPD sub-committee to determine an appropriate course of action.
50. The CPD sub-committee will have the right to investigate any concerns about the standards of training or assessments, including visits, and require changes to be made

in order to address concerns they have identified. Ultimately, the CPD sub-committee will have the power to terminate the contract and/or refuse to approve and application for continued approval.

Fees

51. The intention is that the process should be self-financing through the charging of a non-refundable application fee and fees relating to ongoing approval and quality assurance.
52. The fees would be calculated to cover any costs incurred by the BSB through the scrutiny and consideration of applications and the conduct of any ongoing quality assurance arrangements over the life of the three year contract. The application approval process will be front loaded so that the majority of the work is complete at a staff level. Staff will be responsible for critically examining each application (including seeking additional information where appropriate) and preparing a recommendation for the CPD sub-committee. Adopting this approach will limit the amount of time spent on each application and will ensure that all of the relevant information is before the CPD sub-committee.
53. Given the application fee is likely to be passed onto barristers attending the course, the working group appreciates that the systems we put in place must proportionately target the identified risks while keeping costs to the essential minimum.

Contracts

54. Successful applicants will enter into a formal written contract with the BSB; in a similar way that BPTC trainers currently do. The contract will set out the formal requirements that course trainers must adhere to, and will have dispute resolution clauses and termination clauses. The CPD sub-committee may suspend or revoke an authorisation in accordance with the terms of the contract.

Appeals

55. The working group does not consider it necessary to have an appeals mechanism. The staff led process should provide sufficient opportunities to identify and address any deficiencies in an application before it is put to the CPD sub-committee for approval, therefore reducing the likelihood of rejection. This approach, albeit on a smaller scale, will be similar to the validation process adopted for the Bar Professional Training Course. Should a first application be unsuccessful, it would be possible to make a further application and, if refused again, the dissatisfied party would be able to have the decision judicially reviewed. The BSB complaints process will also be open to any dissatisfied applicants.

Public access training outcomes

Identified risks	Learning outcomes	Key areas	Required knowledge, understanding and skills: On successfully completing training individuals will:
A public access barrister fails to understand the regulatory and legal requirements relating to their work in this area, which is to the detriment of clients	Know and understand the regulatory and legal requirements that apply to public access work	Regulatory and legal requirements	<ul style="list-style-type: none"> • Know and understand how the Code of Conduct applies to public access work, including only taking on cases in which they are competent, acting in clients' best interests, outsourcing (devilling) and handling complaints • Know and understand the specific public access rules and guidance and how these apply to their work, including understanding that their function as a barrister is not altered and the rules relating to fees and their calculation • Know and understand the rules relating to the conduct of litigation, including the definition of litigation and the steps that must be followed to gain authorisation to conduct litigation • Know and understand how the Money Laundering Regulations 2007 affect public access work • Know and understand when the provisions of the Proceeds of Crime Act 2002 apply to public access work • Know and understand relevant sections of the Consumer Protection from Unfair Trading Regulations 2008 relating to misleading clients • Be aware of the importance of keeping knowledge and practice in this area up to date, as long as work in this area is conducted

<p>A public access barrister takes on a case that should involve a solicitor, which is to the detriment of clients</p> <p>A public access barrister continues to accept instructions from a lay client when it would be in a client's best interests to involve a solicitor</p> <p>A public access barrister withdraws from a case to the detriment of a client</p>	<p>Understand the circumstances when it would be in a client's best interests to refuse instructions or withdraw from a case</p> <p>Understand the relevant considerations for instructions from intermediaries</p>	<p>Acting in the client's best interests – when and when not to act or continue to act</p>	<ul style="list-style-type: none"> • Know and understand the rules relating to public funding and how to apply these to determine whether it is in the client's best interests to take on a case • Know and understand the circumstances when it would be in the client's best interests to employ a solicitor • Know and understand how to identify the factors that determine whether instructions may be accepted from lay clients or their intermediary, including the client's ability to conduct litigation and eligibility for public funding • Be able to consider how a case is likely to develop and whether or not it would be in the clients best interests for them to accept instructions • Know and understand how to identify the factors that determine whether they should continue act for a lay client or their intermediary, including the complexity or time commitment required for a case • Know and understand the rules relating to ceasing to act and returning instructions to a client • Be able to manage their own workload and resources to ensure that the best interests of clients are served • Know and understand relevant considerations and issues relating to accepting instructions from an intermediary • If a newly qualified barrister with less than 3 years standing, know and understand arrangements for seeking advice from a qualified person with experience in public access work
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<p>A public access barrister is unable to identify and manage vulnerable clients, which is to the detriment of such clients</p>	<p>Identify and manage vulnerable clients so that they can act in the client's best interests</p>	<p>Identifying and managing vulnerable clients</p>	<ul style="list-style-type: none"> • Be aware of the differing factors such as age, race or ethnicity, socio-economic status, disability or other factors which could make clients vulnerable • Be aware that refusing to represent a client on the basis of any protected characteristic is unlawful, for example refusing to act for a disabled client because of their reasonable adjustment requirements • Be aware of the impact their own values and assumptions can have in their dealings with vulnerable clients • Understand the need to modify how they communicate with clients to take account of the factors which make them vulnerable • Respond appropriately and sensitively to the needs and concerns of vulnerable clients • Understand how the differing needs and concerns of vulnerable clients can impact upon the management of their case and any further steps that should be taken to ensure that a case is managed in the client's best interests, for example any resources and services available to support vulnerable clients • Be aware of the importance of keeping knowledge and understanding of best practice in this area up to date, as long as work in this area is conducted
<p>A public access barrister has inadequate systems and administrative arrangements in place, which is to the detriment of clients</p>	<p>Know and understand the skills required for managing cases including writing appropriate letters and keeping files</p>	<p>Systems and administrative arrangements</p>	<ul style="list-style-type: none"> • Know and understand the need to have appropriate systems and administrative arrangements in place for managing public access work • Understand how inadequate systems and administrative arrangements can impact negatively on clients

			<ul style="list-style-type: none"> • Know and understand the features of effective systems and administrative arrangements that should be in place to deal effectively with the management of a case • Know and understand the insurance and indemnity arrangements that should be put in place • Know and understand how to apply model client care letters for use with lay clients and/or their intermediaries, including how these might need to be amended for vulnerable clients eg having them translated or printed in a larger font • Be able to draft clear and appropriate letters for use with lay clients or their intermediaries (see above) • Understand the importance of having a clear policy for dealing promptly and efficiently with client's complaints • Understand the importance of communicating and ensuring that clients have understood their complaints policy
Inability to communicate and interact appropriately with clients or their intermediaries means that a barrister is unable to manage a case in the client's best interests	<p>Interacts appropriately and effectively with lay clients in:</p> <ul style="list-style-type: none"> • Making initial contact and establishing a relationship • Discussing, explaining and agreeing fees • Explaining the role of a barrister and discussing whether it might be in the clients 	Dealing with clients	<ul style="list-style-type: none"> • Understand the need to provide clients or their intermediaries with clear information that allows them to make informed decisions about the conduct of their case • Communicate appropriately and sensitively with clients or their intermediaries, using verbal and non-verbal forms of communication, to explain their role and the services they can provide including reference to rules relating to the conduct of litigation • Listen to and respond appropriately to issues and concerns raised by clients or their intermediaries

	best interests to instruct a solicitor		<ul style="list-style-type: none">• Demonstrate effective and appropriate skills in communicating advice and information to clients and their intermediaries• Be able to deal with difficult and unfamiliar situations appropriately, including declining instructions, seeking to withdraw from a case, handling complaints and dealing with vulnerable clients
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PUBLIC ACCESS TRAINING: GUIDANCE FOR PROVIDERS

1. Purpose of document

The purpose of this document is to provide organisations interested in providing public access training with:

- Background information about why changes to the training have been made;
- Information about the new training outcomes; and
- Guidance about our expectations of providers and programmes.

2. Background

The public access scheme has been running since 2004. Training is currently offered by a number of providers. Historically the programme has been a one-day course with no formal assessment.

The BSB has reviewed the training programme in order to determine:

- Whether the current training requirements are adequate to promote the regulatory objectives set out in the Legal Services Act 2007; and
- Whether the interests of clients (particularly vulnerable clients) are met.

In addition, the BSB has, with the Legal Services Board's approval, changed the rules in the Code of Conduct relating to the conduct of public access work. The following prohibitions have been removed:

- The prohibition on acting when a client may be entitled to legal aid; and
- The prohibition on barristers with less than three years' practising experience.

We have taken account of these changes to the public access rules in our review. We have made changes to the focus of the current training programmes and introduced a requirement for formal assessments. The intention is that assessment will reassure clients, and the wider public, that all those who have successfully completed the training have shown that they have the knowledge, skills, and understanding to do public access work competently.

3. The outcomes for public access training

We have sought to avoid setting out detailed and prescriptive requirements for the new public access arrangements. Instead, we have identified outcomes, in the form of required knowledge, understanding and skills, which must be delivered through training and assessments. Our intention is to allow providers, who are experts in the design and delivery of training and assessments, scope to develop a range of training and assessment models that meet our requirements. This will allow new and innovative approaches to be developed, promote competition between providers, and allow barristers seeking training in this area a range of models from which to choose.

We also hope that providers will develop models that are suitable as refresher programmes for individuals who have previously undertaken training and wish to ensure that their knowledge, understanding and skills remain up to date and fit for practice. In addition, we anticipate that there will be a market for 'top up' programmes, designed to ensure that

individuals who have been trained already are able to show that they have retained the knowledge, understanding and skills from the original course and met all the new outcomes, and are thus competent to continue to practise in this field.

The outcomes for public access training are attached for information at annex 1. These are designed to:

- Tell barristers who are contemplating being trained for public access work what will be expected of them; and
- Allow training providers to develop a range of training programmes and associated assessments that will deliver the outcomes we require.

4. Guidance for training providers

We are keen not to make prescriptive rules and requirements for the new public access training programmes. The BSB is aware that potential providers will need some guidance about what training and assessment arrangements we will expect. So, the guidance which follows provides some information about the sort of criteria that we will apply when considering proposals.

4.1 Length of programmes

- There are no specific requirements about the length of programmes, and we are aware that timings may vary, depending upon whether or not a programme is designed to provide full training and assessment, is a refresher for previously trained and experienced barristers, or a top-up for individuals who have undertaken the previous training and now wish to show that they have met all the new training outcomes. We would normally expect that a full programme would not be less than 12 hours, in order appropriately to cover the full range of the outcomes and to include assessments. Providers will be expected to show how they will ensure that there is enough time to cover all the outcomes, and to ensure that they are covered rigorously and robustly.
- With respect to the top-up training we expect that this programme should not be less than 3 hours.

4.2 Resources, teaching and learning approaches

- We are keen to ensure that those providing training and assessment provide adequate resources for training and use appropriate teaching and learning approaches. We will expect trainers to provide appropriate accommodation and facilities for training, and teaching and learning materials that will support trainees. We will require applicants to explain what resources they will make available to support trainees.
- The outcomes will allow providers to use a range of teaching and learning methods, such as: self-learning, classroom teaching, practical activities, and role plays. We hope and expect that providers will use a diverse and innovative range of approaches. We will expect applicants to provide a plan or 'blue print' which explains how and when each outcome will be taught, so that we can be confident that all the outcomes will be appropriately covered, and that trainees will have opportunities to develop the required knowledge, understanding, and skills.

4.3 Assessment arrangements

- The outcomes will allow providers to use a range of assessment methods to assess whether candidates have shown the knowledge, skills and understanding we require. We anticipate that providers will use a range of techniques, including self-assessments,

written tests, including multiple-choice questions, assessed role-plays, and practical activities. We will expect the providers to explain, in their programme plan, or 'blue print,' how and when each outcome will be assessed, and what marking criteria they will use. This information will allow us to judge whether an appropriate range of valid and reliable assessment techniques will be used.

4.4 Dealing with vulnerable clients

- A key element of the training outcomes is an enhanced focus on identifying and dealing with vulnerable clients. Trainers must ensure that barristers have the right skills to identify whether a client has the ability, resources and facilities to perform the activities usually undertaken by a solicitor. We appreciate that this is a large area which will need to be handled in a focused and pragmatic way. We will expect providers to explain how they will make trainees aware of the full range of protected characteristics (set out in the Equalities Act 2010), and how they teach trainees about the more relevant protected characteristics. We will also be interested in the provision of teaching and learning materials that will make trainees aware of charities and other support groups for different types of vulnerable client, so that they will be able to 'signpost' appropriate clients to further help and support.

4.5 Interacting with clients

- A key element of public access work is direct interaction and communication with clients. One of the training outcomes focuses on interaction with clients. We will be particularly interested to see how providers intend to embed teaching and learning of the relevant skills in their training programmes, and how these skills will be assessed. We would expect this to be a key element of any training programme plan or 'blue print' which is submitted for approval.

4.5 Quality assurance

- The integrity of the training will depend on appropriate teaching and assessments. Following approval we will require providers to submit annual reports that provide information about any issues identified through quality assurance arrangements, about the number of students enrolled, and pass rates. Consequently, during the application process we will expect providers to explain what arrangements they propose for monitoring and reviewing teaching and assessments. We will also expect providers to tell us what arrangements they propose for appointing independent external examiners, and for identifying and managing conflicts of interest.
- In relation to equality and diversity (E & D), providers will need to include in the report the number and nature of any reasonable adjustments that have been made to facilitate attendance on training and to support disabled barristers undertaking the assessments.
- Criteria for use in the appointment of an external examiner are attached as an Appendix.

4.6 Course cost

- It will be a matter for the course providers to set the cost of the course. The BSB does, however, suggest that a variety of payment options are made available (including payment plans). This will help to ensure that the training is open to barristers from a range of socio-economic backgrounds.

4.7 Equality and diversity and reasonable adjustments

- In making the application, providers will be required to:

- a) Produce an E & D policy, or adopt the BSB's;
- b) Produce a reasonable adjustments policy;
- c) Confirm that those delivering the training have had recent and appropriate E&D training (specifying courses);
- d) Monitor take up of courses by equality strand and identify any under/overrepresentation of particular groups together with a plan for remedying such over/underrepresentation;
- e) Equality impact analyse course materials and assessments.

4.8 Maximum number of candidates

- The BSB will not specify a maximum number of candidates that can attend the course at any one time; this will be left to the discretion of the training providers. However, we would be unlikely to approve an application that intended to deliver the course to more than 20 candidates in the same course.

5. Top-up training courses

Barristers currently undertaking public access work, who attended the previous training course, will be required to complete a top-up programme within 24 months of the new course being made available (unless they obtain a waiver). This will help to ensure they can demonstrate that they have retained the knowledge, understanding and skills from the original course and achievement of the new learning outcomes without having to complete the full new training course. We will require providers to put in place arrangements that will allow candidates who completed the training more than five years before the new training course became available to demonstrate retention of learning from the original course. Candidates who are unable to demonstrate retention of this learning will be required to undertake a full training course. We therefore welcome applications from providers for such top-up programmes.

When making an application we will expect providers to complete the full application form. Under the course content section providers are expected to map the proposed top-up programme against the new learning outcomes and demonstrate how it is designed to:

- a) Augment training from the old course; and
- b) Allow trainees to demonstrate achievement of the required outcomes.

As with applications for the full programme, we will seek information about the duration, teaching and learning resources available, and methods of teaching and assessment in order to reassure ourselves that the proposals will deliver training and assessments that are fit for purpose.

Criteria for the appointment of external examiners for public access training courses

Training providers must appoint an external examiner who can show appropriate evidence of the following:

- 1) competence and experience in either:
 - a. the conduct of public access work; or
 - b. the teaching of public access or a related area; or
 - c. both fields;
- 2) a sound understanding of the current regulatory requirements relating to the conduct of public access work;
- 3) sufficient standing, credibility and breadth of experience within the area to be able to command the respect of academic and/or professional peers;
- 4) sufficient understanding of current theory and practice relating to teaching and assessment to make informed judgements about standards of teaching and assessment.

Conflicts of interest

Providers must not appoint as external examiner anyone with a close professional, contractual or personal relationship with a member of staff or student involved with the course or any other actual or apparent conflict of interest. In addition, providers must not enter into reciprocal arrangements with other providers in relation to the appointment of external examiners.

Terms of office

- a. The duration of an external examiner's appointment will normally be for three years, with an exceptional extension of one year to ensure continuity.
- b. An external examiner may be reappointed in exceptional circumstances but only after a period of three years or more has elapsed since their last appointment.
- c. Former staff and students of an institution cannot take up external examining appointments at that institution within five years of leaving and external examiners should not have any other close links with the appointing institution (e.g. research collaborator, near relative taking a programme to be reviewed by the external). External examiners should not hold more other external examining or moderating appointments.
- d. Academic departments must not 'exchange' external examiners and new appointments should not be from the same department of the current external examiner as the previous appointment.