



ENTRY TO THE BAR WORKING PARTY

FINAL REPORT

November 2007

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CHAIRMAN'S FOREWORD

It gives me great pleasure to introduce the Final Report of the Working Party on Entry to the Bar. The Working Party was formed fourteen months ago as a result of the Bar Council's appreciation of the importance of access to, and training for, the Bar, causes to which all members are deeply committed. I believe that the implementation of our recommendations, which are set out in the first chapter of this Report, should significantly improve access to the Bar for those from less privileged backgrounds, and should also help to raise the standards of training for barristers.

The Bar can only flourish and retain public confidence if it is a diverse and inclusive profession. Diversity and inclusivity extend not only to gender, ethnic origin, physical ability, religious belief, and sexual orientation, but every bit as much to social, economic, and educational circumstances and background, and to age. Diversity and inclusivity are essential if a modern profession is to maximise its credibility and to contribute towards a fairer and more effective society. Moreover, they are not inconsistent with selection on the grounds of ability and potential, which are both vital criteria for practice at the Bar. On the contrary.

There is a perception that the Bar is only open to the more privileged, and, like many perceptions, this has a strong element of self-fulfilment. Many from less fortunate backgrounds are thereby put off even considering a career at the Bar; and there are aspects of the entry procedures and training, particularly the cost and the risk, which exacerbate the problem. It is only right to acknowledge the positive steps that the Bar Council, the four Inns of Court, and many sets of Chambers have already taken over recent years, with a view to improving access and training. It is equally true, however, that more can and should be done.

I should like to pay a very warm tribute to the hard work and selfless commitment of all the members of the Working Party and the Executive Committee, with whom it has been a privilege to work. Inevitably, some people were particularly generous with their time and expertise, but it would be invidious to seek to single them out here. The contributions from the members of the Working Party, combined with the excellent submissions we received from a variety of sources, have enabled us to produce recommendations which we hope will prove effective, coherent, affordable and practicable. Our recommendations are highlighted in each chapter, as well as being listed together in Chapter 1, which provides an Executive Summary of our conclusions.

I very much hope that all our recommendations will be implemented.

**The Rt Hon Lord Neuberger of Abbotsbury
House of Lords
London SW1**

November 2007

CHAPTER 1

EXECUTIVE SUMMARY

We begin this Report by setting out all the recommendations of the Working Party, as we believe that this will provide readers with a helpful executive summary, and an overview of our conclusions. The recommendations set out in this chapter are also contained in the ensuing chapters of the Report to which they relate.

Recommendations relating to Schools and Placement Schemes (Chapter 3)

Recommendation 1: A module concerning the functions of the law, the legal system and lawyers should be added as a compulsory element of the National Curriculum.

Recommendation 2: The Bar should continue to develop and participate in Placement Programmes, such as that offered by the Social Mobility Foundation, which provide an opportunity for children from less privileged backgrounds to experience life at the Bar.

Recommendation 3: The Bar should establish closer links with, and increase awareness of, the Magistrates' Courts Mock Trial Competition, as well as the Crown Court Mock Trial Competition, organised by the Citizenship Foundation.

Recommendation 4: The Bar should build on other existing schemes to enable barristers to visit and talk to schools, sixth form colleges and their career advisers. Such visits should frequently aim to be interactive and should carry a 'brand' name such as "School Courtrooms" and "College Courtrooms". As well as talking to students, members of the Bar should be encouraged to arrange and judge moots at schools, under the same brand names.

Recommendation 5: The Bar Council and the Inns should collaborate to produce a DVD and podcast aimed at school children. The DVD should be circulated to the career advisers of all schools for pupils to access and view at their leisure.

Recommendation 6: The Bar should improve its mentoring procedures for school students, including a greater role for Circuits, Specialist Bar Associations and the Employed Bar.

Recommendation 7: The Bar should consider establishing a central co-ordinating role or 'Education and Careers Ambassador' with responsibility for streamlining the information, materials and communications needed to promote and develop the above recommendations.

Recommendations relating to Universities (Chapter 4)

Recommendation 8: The Bar Council and the Inns should address the technical issue of ensuring that students using a variety of search terms and commonly used search engines which will be likely to find the Bar Council's and/or Inns' websites at or near the top of their search results.

Recommendation 9: The Bar Council and the Inns should collaborate to produce a DVD and podcast aimed at university students. The DVD should be appropriately distributed and publicised in order to reach a large number of potential applicants to the Bar over a number of years.

Recommendation 10: The various initiatives currently undertaken by the Inns, the Bar Council, employers and individual Chambers should be identified, published and co-ordinated, so that gaps can be identified. Inns, Circuits, Chambers and Specialist Bar Associations should be invited to encourage their members to forge links with local universities and GDL providers, with the aim of providing more and better quality information to the students about a career at the Bar.

Recommendation 11: There should be more organised contact between local judiciary and students, and between the employed Bar and students, including more speaking engagements.

Recommendation 12: Chambers should be encouraged to offer more mini-pupillages, including those for shorter periods (2-3 days, rather than the more usual full week). Consideration should be given to obtaining funding for travel and accommodation expenses of those attending mini-pupillages.

Recommendation 13: Training days for university career advisers should be organised by the Bar Council and/or the Inns. Career advisers should also be given contacts for queries in the Bar Council and the Inns' Education and Training departments.

Recommendation 14: There should be closer liaison between the profession and law tutors and lecturers from all universities. The Bar Council's Recruitment and Entry Sub-Committee, the Inns, and the Circuits should arrange for closer liaison with the Association of Law Teachers and the Society of Law Scholars as well as the Learning and Teaching Support Network, a resource for lecturers.

Recommendation 15: A scheme of student ambassadors should be created to enable students to attend training seminars with the Bar Council and Inns with a view to their then providing a focal point for information at their universities.

Recommendations as to the Bar Vocational Course (Chapter 5)

Recommendation 16: The Bar Council and BVC providers should arrange matters so that an applicant for the BVC knows whether she or he has a pupillage offer before risking the loss of deposit for the BVC.

Recommendation 17: The BVC must be intellectually challenging and of a high quality, and must provide a high standard of education for able people.

Recommendation 18: We support the Wilson Report's recommendation that the BVC should continue to last for 32 working weeks and not be reduced in length.

Recommendation 19: We support the Wilson Report's recommendation that the BVC should, where feasible, be delivered to a Masters-level standard, and that it should have the facility of being extended so as to lead to a Masters degree.

Recommendation 20: The BVC should be subject to a uniform final examination across all providers, set centrally and marked according to a centrally regulated and monitored standard.

Recommendation 21: The pass rate for the BVC should not be so generous as to reduce the credibility of the course.

Recommendation 22: The grading of the BVC must be clearer so as to assist potential recruiters and employers.

Recommendation 23: Consideration should be given to ways of expanding more flexible learning into the non-practical aspects of the BVC, so long as this does not in any way compromise standards.

Recommendation 24: There should be no specific limit on the number of those doing the BVC.

Recommendation 25: Investigations should be made as to the feasibility of introducing an entrance examination, to provide a level playing field for all those considering applying for the BVC.

Recommendation 26: BVC providers should be required to implement an appropriate English language test for those for whom English is not their primary language.

Recommendation 27: Research should be undertaken to establish (a) whether it would be unfairly detrimental to any groups for a qualified 2:1 BVC entry condition to be imposed, (b) the extent, if any, to which the presence of students on the BVC with degrees lower than a 2:1 adversely affects the performance of others, and (c) the relative extent to which people with a 2:2 and no post-graduate degree obtain pupillages and tenancies.

Recommendation 28: Depending on the results of the research mentioned in recommendation 27, the Bar Standards Board should consider raising the entry requirement to the BVC to a 2:1 degree standard.

Recommendation 29: In the meantime, BVC providers should be required to inform, both orally and in writing, any applicant who does not have a 2:1, how many and what proportion of its BVC graduates in the past four years who have not been awarded a 2:1 (or a first) obtained a pupillage and entered practice.

Recommendation 30: A loan scheme should be set up to offer loans on preferential terms, alongside the Inns' scholarships and award schemes, to facilitate studying for and entry to the Bar.

Recommendations as to Pupillage (Chapter 6)

Recommendation 31: The Bar Council should devise and implement a clearing house system for pupillages to ensure that funded pupillage vacancies do not remain unfilled.

Recommendation 32: The Bar Council and the Bar Standards Board should work towards ensuring that more employed and other pupillages are made available.

Recommendation 33: Subject to appropriate monitoring and supervision, pupils should be permitted to seek to undertake their pupillages part-time, where it is feasible and the pupil's circumstances make it desirable.

Recommendation 34: Waivers for part-time pupillages should still be obtained from the Bar Standards Board before they can actually be undertaken, but the procedure should be better advertised. The Bar Standards Board should be flexible and understanding in its approach to applications for waivers. The Bar Council should undertake research and consultation in order to draw up more detailed guidance on part-time pupillages.

Recommendation 35: Training in part-time pupillages should be included as part of the programme for pupil supervisors.

Recommendation 36: Pupils should be allowed to work during their pupillage, subject to the agreement of their pupil supervisors and provided that the work does not interfere with the training value of the pupillage.

Recommendation 37: A funding pool should be established so as to provide additional funded pupillages sponsored by employers or Government agencies unable to train pupils themselves, but keen to ensure a good supply of barristers with particular skills.

Recommendation 38: Active measures should be taken to encourage, and enable, employers to become approved Pupil Training Organisations (PTOs) and to offer employed pupillages.

Recommendation 39: The Bar Council should encourage Chambers to adopt a mentoring policy specially tailored for pupils.

Recommendations on Selection Procedures for Pupillage and Tenancy (Chapter 7)

Recommendation 40: All barristers involved in selecting assessed mini-pupils, pupils and tenants should be required to be trained in non-discriminatory selection procedures.

Recommendation 41: Merit-based selection procedures involving written or oral work should be actively encouraged in place of interview-based selection procedures.

Recommendation 42: The Bar Council should encourage good practices in pupillage and tenancy and employment selection.

Recommendation 43: The recent recommendations of the OLPAS Rules Working Party should be put into effect. In particular, there should be a common and compulsory timetable for pupillage applications.

Recommendations as to Retention (Chapter 8)

Recommendation 44: Some equality and diversity training should be made compulsory for all barristers as part of their continuing professional development requirements.

Recommendation 45: Chambers should be encouraged to consider guaranteed income schemes for barristers in their early years of practice.

Recommendation 46: There should be closer monitoring of the extent to which there is actual compliance with equality and diversity requirements.

Recommendation 47: The Bar Council should encourage Chambers and relevant employers to adopt a mentoring policy for practice development and particular needs. In particular, specific arrangements should be in place to ensure that (a) women who take maternity leave or career breaks to accommodate caring responsibilities and (b) practitioners with disabilities, should be offered a mentor.

Recommendation 48: Further guidance should be given to Chambers on disability, and the need to make reasonable adjustments for practitioners with disabilities.

Recommendation 49: The Bar Council should ensure that its own practices and policies do not unjustifiably disadvantage practitioners with disabilities and others, including women on maternity leave and those with caring responsibilities.

Recommendations as to Statistics, Monitoring and Funding (Chapter 9)

Recommendation 50: The Bar Council should establish a data resource that is based upon detailed information concerning background and progress of entrants to the profession – an Individual-Level data set.

Recommendation 51: The Bar Council should work towards data anonymisation and secure storage to permit BVC providers and Bar Mutual to supply individual-level data.

Recommendation 52: The Bar Council should arrange for a detailed statistical analysis of the target cohort data (and any further cohorts) to establish whether there are unexplained biases either in favour of or against particular groups of individuals.

Recommendation 53: The Bar Council should consider whether additional analysis would be useful in order to determine whether there are regional biases in the entry process, the nature of the relationships between educational background, ethnicity and socio-economic background of entrants and the extent of similarities or differences between the performance of students qualifying from different BVC providers.

Recommendation 54: The Bar Council should oversee the implementation of our recommendations, including those with significant resource implications, in order to agree priorities for implementation and the development of implementation plans.

Recommendation 55: The progress of implementation of our recommendations should be regularly monitored.

Recommendation 56: An Access Monitoring Group should be established by the Bar Council to ensure that progress is made in implementing our recommendations.

Recommendation 57: The Access Monitoring Group should produce twice-yearly reports to the Bar Council tracking progress, and recommending further steps that need to be taken to improve access to the profession.

CHAPTER 2

INTRODUCTION

The Background

1. A concerted effort is needed to render the Bar as accessible as possible to those from less privileged backgrounds: in particular to those who are less advantaged socially, educationally, financially, and to those who feel discriminated against on grounds of ethnicity, gender, physical ability, or age. Although at least some of the issues involved have been considered on previous occasions and some steps have been taken in the right direction, there is an opportunity for a more imaginative and coordinated series of initiatives which should achieve a substantial improvement in the current situation. That opportunity should now be grasped.
2. In recognition of this, and following preliminary discussions with interested parties, including the four Inns of Court, the Bar Council set up a Working Party in September 2006 to consider all aspects of this difficult and important issue. The specific remit of the Working Party was “*to develop proposals for (a) improving funding for new entrants, and (b) identifying and reducing barriers to entry for minority and socially and economically disadvantaged students*”.
3. The members of the Working Party (some of whom were recruited as it became apparent that additional expertise was necessary) include employed barristers, self-employed barristers, academics, people with considerable experience of issues relating to access to, and training for, the Bar and other professions, lay people, and judges. A list of the members is set out in Appendix 1 to this Report. The Working Party met on an approximately six-weekly basis, and has been supported by an Executive Committee, which met approximately every month, and whose members are also identified in Appendix 1.
4. We were requested to produce our Final Report by the end of 2007. This has always been an ambitious aim which we appreciated would limit the amount of research which could be done. Although it has meant that we have been under some pressure, it was a target which was accepted, indeed approved, by the Working Party. This was on the basis that a number of worthwhile recommendations could be considered and specified within that period, and any longer term investigations that were needed could be identified and undertaken afterwards; in addition, without a tight time-table, the implementation of many beneficial steps would have been delayed.

The Employed and Self-Employed Bar

5. It may be sensible to explain the organisational background of the Bar very briefly. A barrister must be a member of one of the four Inns of Court, which have collegiate and educational functions, as well as providing substantial sums for scholarships. The Bar Council represents and regulates the profession under what is

now the Legal Services Act 2007. Its regulatory functions are undertaken by the Bar Standards Board (BSB), which is a ring-fenced body which has been operating since 1 January 2006.

6. The self-employed Bar consists of about 11,500 fully qualified barristers almost all of whom work out of sets of Chambers based in towns and cities in England and Wales. The employed Bar consists of some 3,500 fully qualified barristers who are employed in the private sector, the Crown Prosecution Service, the Government Legal Service, or Local Government.
7. In order to be fully qualified, a barrister must, at least in general:
 - (a) be a member of one of the four Inns of Court, which involves satisfying certain standards;
 - (b) have either a law degree, or a degree in another subject and a General Diploma in Law (a “GDL”, formerly known as the CPE qualification), which involves a year’s intensive study of the law;
 - (c) have passed the Bar Vocational Course (the “BVC”), at least to the standard of “competent”;
 - (d) have completed one year’s pupillage, which involves spending twelve months with one or more supervisors, who are barristers, qualified as registered Pupil Supervisors by one of the four Inns of Court; during the second six months, a pupil can spend some of the time on his or her own work;
 - (e) have either a self-employed or an employed practising certificate, which may be revoked or suspended if the barrister is found to be in breach of the Code of Conduct for the Bar of England and Wales.
8. Almost all self-employed barristers depend on their own professional work for their income, although their outgoings, on accommodation, clerking, secretarial support and the like, are normally shared on an agreed basis with other members of the set of Chambers from which they work. Self-employed practice at the Bar has most of the advantages and disadvantages of working for oneself in other fields. Practice at the employed Bar generally involves less financial insecurity than that experienced by many self-employed barristers (particularly those at the start of their career), as of course a salary is received on a regular basis. In employed practice, career development and training opportunities are usually provided on a structured basis, fully funded by the employer. Holiday pay, pensions, sick and maternity leave, as well as a spectrum of flexible working patterns, are all widely available at the employed Bar. Salaries tend to be lower at the employed Bar than potential earnings in Chambers, but such a framework coupled with financial predictability, may well be of particular interest to those with limited finances, caring responsibilities or disabilities.
9. There is a perception in many quarters that the number of self-employed barristers is likely to decline over the next few years. There are grounds to support this view, but such predictions have been made frequently over the past forty years, during

which the number of those practising at the self-employed Bar has in fact increased substantially.

10. The prospects for the employed Bar, on the other hand, appear to be more secure. Numbers have increased substantially over the past few years, and almost all the reasons put forward for predicting decline in numbers at the self-employed Bar do not apply. Members of the self-employed Bar do not always appreciate the importance of the employed Bar, and we believe that it has an important contribution to make to the solution of the problems we have been asked to address.

The Interim Report

11. The Working Party decided to issue an Interim Report, which was published in April 2007. The Interim Report (which is annexed as Appendix 2) included a list of questions, prepared partly in order to concentrate our minds on identifying the problems and seeking to find solutions in a structured and co-ordinated manner, and partly to solicit evidence and reactions from anyone interested in participating. In the Interim Report, we said this about the background to the setting up of the Working Party:

“A number of reports have been produced by committees set up over the past 16 years. The information gathered, and the recommendations made by these committees, though sometimes out of date, will often be of real value. Although some of these recommendations have been implemented, many have not, mostly because they turned out to be unworkable or unacceptable at the time. What makes this Working Party different from earlier committees is (a) the very wide-ranging breadth of expertise, commitment and experience of the membership, from which it can draw, and (b) its remit, which is far wider than that of any previous committee, covering the whole of the period from school to early years at the Bar, and every aspect of access to the Bar.”

12. We then introduced the “Nature of the Problem” in general terms in this way:

“We have read the recent contribution to the subject of equality of opportunity in “Fairness and Freedom: The Final Report of the Equalities Review”. On page 6, it defines an equal society as one that “protects and promotes equal real freedom and substantive opportunity to live in the ways people value and would choose, so that everyone can flourish”. On the same page, it emphasises the “need to focus on those at the bottom end and make sure that their achievements improve at a faster rate than those at the top”. On page 10, the Equalities Review stresses the importance of measurement and transparency, discussed more fully at pages 95 to 97 and 109 to 111. Particularly relevantly for the Bar is the point that a “positive role [is] required of institutions in removing barriers or constraints and making sure that opportunities to flourish are real” – page 16. In the light of the point made at the end of paragraph 8 of this report, it is worth also referring to the time-scales indicated on page 24 of the Equalities Review Final Report.

“Of course, many of the aims of the Equality Review represent the wider aspirations of society generally, and, as already mentioned, the opportunities for people to live and work in the ways they choose depend greatly on general social factors like access to education. The Bar is inevitably constrained by such factors, and can only select from those who excel and who present themselves as candidates. However, more can be done to encourage the best to present themselves, irrespective of background, and more can be done to identify those from less privileged backgrounds who excel.

“It is also right to mention the recent statutory equality duties, which are binding on public bodies. In particular, public bodies have a duty to eliminate discrimination and to promote equality of opportunity under section 71 of the Race Relations Act 1971, section 3 of the Disability Discrimination Act 2005 and section 84 of the Equality Act 2006, to all of which we have regard. We acknowledge that any recommendations we make will have to satisfy the reasonable adjustments duties. We also bear in mind that the Government’s Discrimination Law Review is expected to be published later this year.”

13. As we went on to point out in the Interim Report, there are two main types of barrier for prospective barristers which are of concern. Those two barriers, which are in practice connected, are social (which very often includes educational) and economic in nature.
14. So far as the social aspect is concerned, the Bar is perceived in many quarters as predominantly populated by those from socially, financially and educationally privileged backgrounds. Some people see it as disproportionately populated by those from public schools and Oxbridge. Like many perceptions, whether or not justified, it has a strong element of self-fulfilment. Thus, the perception can discourage people from less privileged backgrounds, many minority groups, or indeed more mature people, and those advising them, from considering the Bar as a profession. Our concern is to get rid of the perception, and of any grounds which might be cited to justify it. Although there have been substantial improvements over the past few years, there is reason to believe that the methods by which some Chambers select pupils and tenants may serve, unintentionally, to reinforce this perception. The problem has been compounded by a lack of easily available, accurate, full and clear information about how to embark on a career at the Bar, and what such a career entails.
15. As to the economic problem, embarking on a career at the Bar involves present expense and loss of income plus future financial and employment risk. A law graduate has to undertake the BVC, which takes a full academic year. A graduate in any other subject has to study for an additional prior year. A BVC graduate then has to do a year of pupillage, at the end of which he or she may be offered a seat (or “tenancy”) in Chambers or a job at the employed Bar. The BVC costs between about £10,000 and £13,000 (to which must be added living expenses, and in some cases, childcare costs). These expenses are mitigated by the availability of scholarships, but a poor person, who may often have accumulated substantial debts already, will be more likely to be put off a career at the Bar by the economic costs and risks than someone who is better off financially. Pupillages are paid, but the average level of funding is not high compared with what many solicitors and other professions pay. Many BVC graduates never get pupillage: annually, there are

about 500 pupillages compared with around 2,000 who pass the BVC. Quite a few of those who manage to get pupillage do not go on to obtain a tenancy. After entering Chambers, many barristers earn relatively badly, especially in their first few years of practice.

16. Having identified these problems in the Interim Report, we went on to express some provisional conclusions and to identify certain other issues which required investigation. The Report ended by inviting representations from any interested person or group on any aspect, whether concerned with specific or general issues, whether raising a new point or dealing with a point we had mentioned, and whether critical or supportive of what we had said.
17. The Working Party received responses (some of which were over 100 pages in length), from a total of 49 sources, including the four Inns of Court, sets of Chambers, employers of barristers, establishments concerned with legal education and those providing legal services, barristers, and law students. A list of those who responded is in Appendix 3.
18. Both by their quantity and by their quality, these responses demonstrate the general level of concern and interest about a number of aspects of entry to the Bar, and the high degree of commitment of all directly involved institutions, such as the four Inns of Court, sets of Chambers, and providers of legal education and legal services. The Working Party has been enormously assisted by the very high quality of these responses, and we wish to express our gratitude to the many individuals, who (whether on their own behalf or on behalf of institutions or other organisations) put so much work into them. Although it is impossible to provide a complete, or even an entirely accurate, summary of all the responses, we have produced an aide-memoire, which is annexed as Appendix 4 to this Report.

Our Aims in Summary Terms

19. As already stated, it is essential that, as far as possible, the Bar is, and is seen to be, equally open to everyone with the requisite ability and ambition, irrespective of irrelevant personal characteristics or background. Inextricably connected with this is another aim namely, to ensure that all practising barristers (whether employed or self-employed) are as well trained as possible for their professional responsibilities.
20. It can fairly be said that these aims are applicable to any profession, and indeed to every type of job, but they are perhaps of particular importance to the Bar. Barristers are in one of the most high profile of the professions and should lead the way, and be seen to be leading the way, in promoting equality of opportunity and professionalism. Further, as much as any other profession, it is ability which attracts success at the Bar. Additionally, members of the Bar advise and represent all members of all categories of society, often in relation to a crucially important issue in their lives. Finally, and uniquely, it is from the ranks of barristers that the majority of Judges are selected, and, to maintain a high level of public confidence, the pool from which such selection is made (and indeed the judiciary itself) must be as diverse and inclusive as possible.

21. We referred to the fact that ability is a pre-requisite for success at the Bar. The word “ability”, at least without amplification, begs many questions. The representations made by Middle Temple suggested that we “should attempt a general statement of the qualities required of a successful practitioner”. We agree: although some qualities can be developed, it is sensible for anyone thinking of becoming a barrister to assess whether he or she may be well suited for that demanding career before spending the cost, time and effort on training for the Bar.
22. We would suggest that the qualities needed for a career at the Bar are a mixture of attributes of temperament and of talents. As to temperament, what is required is a combination of honesty, courage, commitment, common sense, and perseverance. As to talents, we would list analytical skills, intellect, persuasiveness, organisational skills, good judgment, and fluency. That is not to say that a person could not succeed unless he or she has all these qualities, or that reasonable adjustments may not be required as appropriate, but, on any view, honesty is essential.
23. It is not only unfair if access to the Bar is much more difficult for someone with these attributes wanting to become a barrister, if he or she comes from a disadvantaged group. It is also damaging to our society and our culture. That is partly because any palpable unfairnesses or inequalities would undermine respect for, and confidence in, the Bar. It is also because, if the pool from which candidates are selected is small, then many of the most able people will be prevented from being barristers which results in a less effective Bar as a whole. Of course, the inherently unequal nature of many aspects of our society, notably in education, financial means and social background, may well mean that it is impossible to ensure a completely even playing field for everybody. However, that is no excuse for not seeking to improve the present situation as much as is possible. Indeed, it underlines the need to do so. And that is what we are aiming to achieve.

The Working Party’s Approach

24. We have decided to approach our task in a structured and logical way, starting at the school stage, moving onto universities, then to the BVC, followed by pupillage, and ending with a career at the Bar. We believe that none of the many previous attempts to address the problems with which this Report is concerned considered them in such an overall or coherent way.
25. That is not said with the intention of denigrating the attempts of earlier committees or of seeking to overestimate the impact of this report. On the contrary. The reports of the earlier committees are identified in Appendix 5, which was prepared by Lisa Wilson, and contains a useful summary of their respective recommendations. These reports were limited by their terms of reference, and they achieved much of value. In some cases (e.g. that of the Mountfield Report), they also helped to identify ideas which, however good they might have been in principle, turned out to be impractical or unacceptable.
26. It would be absurd to pretend that the recommendations contained in this Report are all original or that, even if they are all adopted, the recommendations would completely transform entry to the Bar, let alone remove every unjustifiable barrier

that currently exists. While it is right to make that point, we would like to re-emphasise our view that that does not begin to justify abandoning any attempt to remove and reduce as many unjustifiable barriers as possible.

27. Our task has been assisted by a number of factors. First, as mentioned above, we have been presented with the opportunity of considering the whole issue across the spectrum. If one is to encourage those who currently feel excluded from a career at the Bar, for inappropriate reasons, it is right to tackle misconceptions and prejudices at an early stage. So schools must be the first, and a centrally important, target as the Attorney-General, Baroness Scotland of Asthal QC, stated in a recent letter to the Working Party. At the other end, if some groups of people encounter unfair prejudice in connection with their careers at the Bar not merely at points of entry, but once in practice, that is not merely undesirable in itself, but it will inevitably discourage members of such groups from embarking on such a career. Accordingly, any analysis cannot stop at the point at which a person becomes a member of Chambers or enters employed practice. Hence the importance of the holistic approach to which we have referred. This comprehensive approach has also meant that it is appropriate and convenient for us to consider the question of training for the Bar as part of the whole issue of entry, rather than as a self-contained problem.
28. Secondly, the Working Party has not been acting alone. Unusually, its deliberations are being undertaken in parallel with a number of committees and other groups set up by the Bar Council to consider what can be seen as specific aspects of our remit on a detailed basis. Examples include Working Parties on the BVC, the Social Mobility Foundation Placement Programme, Financing the BVC, and the On Line Pupillage Application Scheme (OLPAS). A full list of these committees and groups is set out in Appendix 6 to this Report. The research, observations, conclusions and actions of these bodies have been enormously valuable to our deliberations and conclusions.
29. Thirdly, there have been the contributions from the members of the Working Party, with their different experiences, areas of expertise, and opinions. Fourthly, we have had the benefit of the many representations, as a result of the Interim Report. We have already expressed our gratitude to those who sent in the responses and it is right to emphasise the extent to which their contributions have enabled us to maximise the value of this Report. Finally, there have been the contacts which members of the Working Party have been able to have with various other organisations. For example, three members took part in the 2007 annual law conference for A level students at Salford University.
30. The structure of this report reflects the approach we have been discussing. We address each stage of a potential barrister's career in turn, starting with school and ending up with practice as a barrister, either employed or self-employed. We have sought to isolate the problems at each stage, particularly for those who are currently unfairly disadvantaged, and have then tried to identify some solutions which should alleviate those problems.
31. As we said in the Interim Report, we do not believe that it is possible to come up with a universal panacea or an immediate solution to the problems of access to the profession. What is required, and what we hope we have achieved, is a

combination of co-ordinated and practical suggestions which, if implemented, should substantially improve the present state of entry to, and training for, the profession.

Anecdotal and Statistical Evidence

32. Our discussions and conclusions must, of course, be as evidence-based as possible. In that connection, evidence may be anecdotal or statistical. Considerable anecdotal evidence has been available on virtually all the issues the Working Party has considered, much of it thanks to the responses to the Interim Report. Anecdotal evidence is important and should not be underrated. Especially when it is substantial, consistent, and in accordance with impression and experience (as it generally has been in relation to the issues with which we are concerned), it is valuable, and we consider that it can and should be relied on, albeit not uncritically.
33. The position with regard to statistical evidence is, regrettably, less satisfactory. The Bar Council and the Inns have records of some relevant information, and have begun to collate evidence to enable reliable statistics to be compiled in due course. In addition to these records, there are other nationally available records which may appear to be relevant to the issues which we are seeking to address. However, as many others before us have concluded, the data in respect of legal professions are far from complete and often out of date. Of particular concern is that such data are often only available in summary or aggregate form, and it may be misleading if one purports to draw any conclusions regarding the impact of any one characteristic, be it gender, socio-economic status or educational background, given that individuals are in fact endowed with a mixture of such characteristics.
34. The Working Party has been assisted throughout its work by the advice, research, and analysis of Professor Chalkley in relation to the gathering, availability, and reliability of statistical evidence. He has provided a paper, annexed as Appendix 7 to this Report, which articulates the danger of attempting to draw conclusions from aggregate data, and as to what can and should be done to improve the size, reliability, and value of the statistical database. The paper speaks for itself, and the Working Party is grateful for his considerable assistance and is happy to adopt his advice.

Other Challenges

35. We are conscious that the concerns as to social mobility and diversity which have prompted the setting up of the Working Party reflect similar concerns in other professions. Only some of these concerns are within the capacity of the Bar to address, as entrants can only be selected from appropriately qualified people, and there are limits to what the Bar can do to address issues of educational disadvantage which skew the pool from which it recruits. There is clearly a powerful case for saying that there should be a much broader debate on these issues.

36. It is also right to make it clear that the Working Party accepts that the Bar is a high profile, competitive profession, which does, will inevitably, and should, attract significantly more entrants than can succeed. None of the measures we recommend will, or should, change these realities. Indeed, the profession's very competitiveness is what makes it so attractive to many, and most of the people who find a barrister's career attractive expect, and thrive on, competition and challenge. Thus, whatever the Bar Council and the Inns of Court do, many entrants will not become established in self-employed or employed practice. Only the very best should succeed. That is the nature of the profession, and it is its excellence that ensures its survival. None of this is to be deprecated. On the contrary, it is in the public interest.
37. Nonetheless, this does highlight another tension that we recognise. On the one hand, it is very important to improve access to the Bar for those members of society from less privileged backgrounds. On the other hand there is a strong perception that there are already too many people on the BVC: annually there are approximately four times as many BVC graduates as there are available pupillages. These two factors might appear to pull in opposite directions, but at least if we are careful, they should not do so.
38. Another point arises from the perception in some quarters that the numbers of self-employed barristers will decline, referred to in paragraph 9 above. If the size of the self-employed Bar does decrease, then many of the problems considered in this Report are likely to be exacerbated, not least as it would be almost inevitable that the number of pupillages in Chambers, already the "pinch point" in terms of entry into practice, will decline further. In this connection, it is appropriate to emphasise that improving access to the Bar is not at all necessarily the same thing as increasing the number of entrants.
39. In formulating our proposals, realism, as well as desirability and practicality, has a vital part to play. It is therefore right to bear in mind the question of resources, which we consider in Chapter 9. Almost all recommendations which can be put forward for improving access to the Bar have financial implications. The Bar is a relatively small profession (with approximately 15,000 members), and the Bar Council, with its many responsibilities, is almost entirely dependent on their subscriptions. While the Inns have substantial available income, it is effectively fully devoted to scholarships, training, library and other professional needs.

This Report

40. The Working Party's objectives, then, are:
 - (a) To ensure that, as far as possible, the Bar selects and is seen to select, the best entrants from all backgrounds regardless of social background, economic circumstances, educational advantages, ethnicity, gender, disability status, sexual orientation, age, religion or belief;
 - (b) To ensure that the education and training for barristers is, and is seen to be, as of high a quality as possible.

If these objectives are not achieved, we believe that the existence of the profession will be threatened. It is this that makes the work of the Working Party so crucial.

41. This Report considers each stage of a potential barrister's career in successive chapters. The Schools section emphasises the need to bring the possibility and attractions of a career at the Bar to as many people as possible at an early stage. This should enable many children, who would not otherwise do so, to consider such a career before they make irrevocable choices about examinations and courses. In Chapter 4, the University stage, we state that the Bar should think, and act, more equitably as between the various universities.
42. The BVC raises a number of issues, at the entry, course, and exit stages. As to funding for the BVC and pupillage, we have a number of suggestions, including the new idea of a funding pool, and proposals to ease bank loans. In relation to pupillage, we discuss a number of issues on which we have some significant suggestions, in particular to increase numbers by a mixture of new ideas (including a clearing house) and extending present arrangements (such as having more employed pupils), and some recommendations with regard to selection. We go on to consider the selection of tenants by Chambers, and career patterns and retention thereafter. Finally, we discuss the implementation of our recommendations.

CHAPTER 3

SCHOOLS' INITIATIVES AND PLACEMENT SCHEMES

Introduction

43. The first set of recommendations in the Interim Report related to what could be done to introduce the idea of working as a barrister more widely to school-age children. The aim of targeting children at this early stage of their lives is to counterbalance the undeniable fact that, by the time most children have completed their GCSEs, and made their A level choices, many are at a very significant disadvantage. That disadvantage is that they have never encountered the Bar in any social or educational context whatever, let alone, even briefly, considered it as a possible career option.
44. Our preliminary conclusions in the Interim Report were as follows:

Schools

We provisionally make the following proposals: -

- (a) *Far better information for school students through improved websites and information sheets (giving more and clearer details of e.g. applying for and pursuing the BVC, the nature of a barrister's working life, levels of cost and sources of funding, and likely levels of income once in practice) and a dialogue with those responsible for careers advice to students.*
- (b) *Placement programmes to inform schools and school students and allow less privileged children to see the Bar at first hand before they have to decide whether to read law at university.*
- (c) *Further mock trial competitions.*
- (d) *Further lectures by barristers to schools of all types in all areas.*
- (e) *Mentoring of school students by barristers who have attended placement programmes or mini-pupillages.*
45. These conclusions were almost universally supported by the responses to the Interim Report.
46. We are of the view that there is a strong need to provide children at schools with broad information on the legal system, and the career opportunities within it, at a much earlier stage than is currently the case. To illustrate this point, we know that children generally grow up with some awareness of the functions of a doctor, teacher or veterinary surgeon. They can therefore start aspiring to those careers before they have any perception of barriers. Until children have some perspective on the role and function of the legal system, aspiration to the Bar will always come with the veil of mystery, particularly for those from disadvantaged backgrounds.
47. As one respondent said, "*We think it would be a good idea to raise the profile of the Bar to school students, perhaps not simply in the context of career options, but also in the context of teaching students about citizenship, the rule of law, and the part played by the Courts in a democratic society*". All members of the Working Party agree with that observation.

Existing Schools Initiatives

48. The Bar Council's career promotion activities are the responsibility of its Training for the Bar Committee which has established the Recruitment and Entry Sub-Committee to run these activities. The Sub-Committee is currently responsible for the following initiatives:
- (a) **Speakers for Schools' Scheme:** The Speakers for Schools Scheme started in 2003. To date there are 480 barristers on the scheme, and approximately 1,400 schools that request talks each year. The aim of this scheme is to provide children with information about how to become a barrister, the work of barristers and life at the Bar. The Bar Council regularly contacts all senior schools and sixth form colleges in England and Wales and invites them to take part in this scheme. It provides a brief for speakers and all other relevant material.
 - (b) **Placements Scheme:** The Bar Council and the Social Mobility Foundation (SMF) ran a pilot Chambers placement scheme in 2007 for 26 lower sixth students from state schools across London. The students were predicted to gain at least an 'A' and two 'B' grades at A-Level and were from modest backgrounds and in receipt of an Education Maintenance Allowance. The feedback from both students and Chambers was very positive; the Bar Council and the SMF plan to run this scheme again next year. It is hoped that the scheme will be widened to extend to Chambers outside London.
 - (c) **Other Schemes:** The Recruitment and Entry Sub-Committee is considering the possibility of running career days for students from state schools. This would be in conjunction with school teachers, career advisers and "Aim High" co-ordinators who would identify those students who have an interest in law. The day would include a mini mock trial competition.
 - (d) **Careers Material:** In association with the Inns, the Bar Council produces "It's Your Call", a publication which is aimed at A level students as well as university students (as discussed in paragraph 95 (a) below). This is currently undergoing a major revision and will include profiles of a variety of practitioners including the Attorney General. In addition, there is a fact sheet, which gives financial information, in particular, the scholarships available from the Inns and details of organisations that are willing to provide professional loans for BVC students. A pupillage handbook is also produced by a company called GTI which currently runs the On Line Pupillage Application Scheme. This gives details of all Chambers offering pupillages and mini-pupillages and an idea of the awards that they carry.
 - (e) **Careers Information:** The Bar Council's website provides a huge amount of information for A level and other students, including a step-by-step guide to qualifying for the Bar and a recruitment timetable. The current information is in the process of being revised and will include statistics showing not only the number of pupillages available year by year, but also a breakdown of pupillages obtained by reference to each of the BVC providers. In addition, there will be links to relevant organisations, particularly the Inns, to alert people to the scholarship funds that are

available. From time to time articles on a career at the Bar are also written for educational publications aimed at students. The Careers and Information Assistant also deals with enquiries by telephone and in writing.

- (f) **Bar Mock Trial Competition:** The Bar National Mock Trial Competition is run by the Citizenship Foundation with assistance from the Bar. It gives young people an insight into the workings of the legal system. It is now in its fifteenth year and over 2,000 students, 200 barristers/advocates and 90 judges from across England, Scotland, Wales and Northern Ireland have taken part. The competition is open to all state secondary schools and Further Education colleges in England, Scotland, Wales and Northern Ireland and is aimed at students under the age of 19.
- (g) **Denham Initiative:** Universities have recently been urged to forge ties with secondary schools in England, with the aim of widening the social range of students in higher education. The scheme has been proposed as part of a drive to get more pupils from low-income families into higher education.

Recommendations as to Schools and Placement Schemes

- 49. We are making seven recommendations to improve the flow of information about the Bar into schools, and to allow children from less privileged backgrounds to gain an understanding about the Bar, so that they can make an informed decision about whether they wish to aspire to a career as a barrister.
- 50. **Recommendation 1: A module concerning the functions of the law, legal system and lawyers should be added as a compulsory element of the National Curriculum.**
- 51. **Recommendation 2: The Bar should continue to develop and participate in Placement Programmes, such as that offered by the Social Mobility Foundation, which provide an opportunity for children from less privileged backgrounds to experience life at the Bar.**
- 52. **Recommendation 3: The Bar should establish closer links with and increase awareness of, the Magistrates' Courts Mock Trial Competition, as well as the Crown Court Mock Trial Competition, organised by the Citizenship Foundation.**
- 53. **Recommendation 4: The Bar should build on other existing schemes to enable barristers to visit and talk to schools, sixth form colleges and their career advisers. Such visits should frequently aim to be interactive and should carry a 'brand' name such as "School Courtrooms" and "College Courtrooms". As well as talking to students, members of the Bar should be encouraged to arrange and judge moots at schools, under the same brand names.**
- 54. **Recommendation 5: The Bar Council and the Inns should collaborate to produce a DVD and podcast aimed at school children. The DVD should be**

circulated to the career advisers of all schools for pupils to access and view at their leisure.

55. **Recommendation 6: The Bar should improve its mentoring procedures for school students, including a greater role for Circuits, Specialist Bar Associations and the Employed Bar.**
56. **Recommendation 7: The Bar should consider establishing a central co-ordinating role or 'Education and Careers Ambassador' with responsibility for streamlining the information, materials and communications needed to promote and develop the above recommendations.**

National Curriculum Module

57. The National Curriculum Module may be said to be outside our remit, but the Working Party considers that the wider point it raises is too important and relevant a topic to be ignored in this Report.
58. The introduction of the Bar, indeed of the law and the legal system, as a part of "normal" life should help in leading to more ambitious career aspirations. Accordingly, aspects of the functions of the Bar should be introduced into the school curriculum. Some legal and procedural aspects will not become relevant until much later than school years. However, the concept of legal independence, and the importance of advocacy and structured argument, to take some obvious examples, could and should be introduced at a far earlier educational stage than at present; indeed, in some schools they have already made an appearance.
59. Our aims in this connection should not be interpreted as seeking in any way to dumb down information about the Bar, or to give school pupils false expectations about the substantial challenges of the profession. Rather they are intended to strip away any unnecessary and unhelpful mystique which has arisen simply because of a lack of good, available, and accessible information about the profession, as well as to show that many of the skills necessary to succeed at the Bar are eminently transferable into other careers and areas of life.
60. Some members of the Working Party have had preliminary discussions with Government to discuss how further information about the role of law and legal careers might be imported into the National Curriculum. These discussions have been constructive, and we remain confident that such a move should sit well within the current citizenship focus of the classes for pre-GCSE students.

Placement Schemes

61. One of the primary barriers to entry to the Bar for those from lower socio-economic groups is, as discussed above, lack of familiarity with the profession. This is not just a lack of any information about what a barrister does; after all, most school children will have at least seen court dramas on television. We are concerned that there is a lack of any familiarity whatever with the professional environment in

which barristers work, and the work, skills, and training which lie behind appearances in court.

62. Children from middle class backgrounds generally have the opportunity to talk about the professions, and to meet members of the professions during their childhood. Their parents are likely to discuss with them whether they might become, for example, barristers, solicitors, accountants, or doctors. They also become accustomed to talking to such people at social engagements. They may not be familiar with the environment in which these people work, but they will find it reasonably easy to take the step from communicating with a barrister or solicitor socially to communicating with one professionally, and, indeed, to considering, on at least a moderately informed basis, whether to embark on a career in the law.
63. Children from less privileged backgrounds, however, normally will have none of these experiences. They may be just as bright, or even brighter, but they will be unlikely to have any experience of mixing socially – or probably at all - with professionals. Their view of barristers will be remote, and it will almost certainly be inaccurate in significant respects. Further, they will have no ready direct or indirect access to friendly advice or information from family and friends.
64. The Working Party believes that this disadvantage can, at least in some measure, be overcome by identifying, and then encouraging, talented children from poor or other disadvantaged backgrounds who might be suitable for entry to the professions, but have no familiarity with them. The Bar has found it very difficult in the past to target such young people. It has worked in schools with a nationwide mock trial competition, and by assisting career departments, but has generally been unable to identify the talented students.
65. The objective should therefore be to work with placement organisations to identify the ablest school students, and then to enable them to learn about the Bar, the courts and barristers at first hand. This will in turn assist in enabling them to decide on an informed basis whether the Bar is a profession that they would wish to enter.
66. The placement programme should be aimed at young people (and particularly at those with talents most suited for a career at the Bar) under 18. The age is important because it is before the choice of university course is made (and it may even be appropriate to consider also aiming the programme at those under 16, before the choice of A levels is made). If such a child reads, say, sports science or media studies, before deciding that he or she wants to go into the law, an obvious barrier to entry arises, namely costs upward of £15,000 in order to undertake the GDL course (until very recently known as the CPE law conversion course). Quite apart from this, there is the more general point that the earlier a particular career is considered, the easier it is to prepare oneself fully, in terms of experience, as well as mentally and psychologically, to embark on that career.
67. We do not suggest that exposing such children to a week or so of law will wholly overcome the hurdle that exists as a result of the social disadvantage we have described. Nothing can fully level the playing field in this respect. But we can at least introduce this cohort of young people to the Bar and then attempt to grow their interest in it by some continuing mentoring in cases where they show enthusiasm for a possible career in the law.

68. In paragraph 22(b) of the Interim Report, we provisionally recommended the introduction of: *“Placement programmes to inform schools and school students and allow less privileged children to see the Bar at first hand before they have to decide whether to read law at university”*.
69. Many respondents to the consultation welcomed these initiatives, but others, particularly from one or two specialist sets of Chambers, doubted whether any kind of mini-pupillage would be appropriate for people who were still at school.
70. Two points may be made in answer to this minority response:
- (a) Placement programmes are intended to be structured and not to provide full-blown mini-pupillages for school students. Their objective is to allow school students to gain a view of the legal profession in general, and the Bar in particular, to enable them to make an informed decision about what to read at university, so that, for instance, they do not read a non-law subject and then find that they are unable to afford to embark on the GDL course.
 - (b) Placement experience in 2007 (see paragraphs 72 and 73 below) has had substantial success with the younger age group. The school students placed in structured programmes have included those spending time in both Chancery and Commercial Chambers. Both the Chambers with which they were placed and the school students themselves reported very favourably indeed on the experience.
71. Prior to the development of placement schemes in this way, mini-pupillages were the only widely recognised means by which anyone who was not a barrister could do any kind of placement at the Bar. They are unregulated and notoriously variable in the extent to which they are fairly advertised, allocated, organised and supervised; consequently they are of very varying value. The SMF placement scheme for sixth formers has been designed to target talented under-privileged students, to formalise the process of organising the placement, and to maximise its benefit. It recognises that what counts for the target group in question is, in addition to learning skills, a cultural and environmental taster of a world from which, because of their background, they would otherwise remain excluded.
72. As a consequence of our preliminary work, stronger links with the SMF have now been forged. The SMF Placement Scheme started on a significant scale for the Bar in 2007. During July 2007, 26 less privileged school students from London schools were placed in selected Chambers on a week’s structured internship.
73. This initiative is now off the ground and proving itself in practice. Not only has feedback been very positive from all concerned, but one student has subsequently gained the required grades to read law at a leading university, and another has obtained an assessed mini-pupillage (i.e. with a view to being assessed for a pupillage) on the strength of the placement. Significant development and expansion are now needed, particularly to spread the work outside London and to the employed Bar.
74. Appendix 8 describes the Bar’s association with the SMF scheme, and the scheme itself in further detail.

The Sutton Trust and other Placement Schemes

75. The Sutton Trust, founded by Sir Peter Lampl, has already organised a very significant placement scheme in which the Working Party believes the Bar should become involved. It has rather more ambitious targets than the SMF, and has so far tended to focus on attracting students from less privileged backgrounds to become solicitors.
76. The Bar Council has now offered to provide courses about the Bar for the Sutton Trust students.
77. We believe that there needs to be more co-ordination between schemes that are aimed at providing talented school students with an opportunity to view the professions in general, and the Bar in particular, at first hand. It is far from clear precisely how many such schemes exist, and we believe that they should, in any event, be far more generally available to talented children.
78. A successful integrated network of placement schemes aimed at high-performing or high-potential students from less privileged and minority backgrounds would go a long way to ensuring that access to the profession was broadened.

Mock Trials, School and College Visits by Barristers and Mentoring

79. These activities already happen, although they are largely unmonitored, unregulated and unfunded. They are, to various extents, supported primarily by the Bar Council secretariat, Circuits and the Inns. Plainly, we do not wish to threaten any of these existing activities with expensive or intrusive monitoring and regulation, unrealistic standard setting, or other means by which such useful and creative activities may be drained of their fun, spontaneity and energy.
80. What we do support, however, is the suggestion that news about existing good quality initiatives should be communicated as widely as possible, to ensure that more people know about, and have access to, such successful and replicable activities. It is such initiatives that stimulate interest in, and inform young minds about, the Bar and the skills, responsibilities and activities associated with it.
81. However, minimising overlap is vital to the efficient use of limited resources, as is ensuring a co-ordinated and consistent message. Accordingly, to put it at its lowest, serious consideration should be given to co-ordinating and publicising the existing initiatives in these fields. Communication both to career advisers and students would be an important aspect of this approach.

Other Methods to Encourage Talented Students from Less Privileged Backgrounds

82. It should be emphasised that even the full implementation of our proposals would by no means wholly solve the problem of access. There are many able young people who for one reason or another are not able to work hard enough at school or are otherwise disadvantaged in achieving their potential and so cannot reach the

stage at which they would be appropriate targets for the kinds of placement scheme we have been considering. As we understand it, this is a particular problem amongst white and black working class boys, many of the cleverest of whom are not succeeding in reaching their potential. This is for many social reasons that are outside the scope of this Report.

83. It is similarly beyond the scope of this Report to suggest ways in which clever young children can be encouraged and inspired to work harder and perform better. The Working Party does, however, believe this to be a crucial component of the problem we are addressing, and we hope that the Government and other concerned organisations will pursue projects aimed at this objective vigorously. Only then will talented children from all backgrounds arrive in their sixth form years able to take advantage of schemes aimed at introducing them to the professions and mentoring them to enable them to join them. In this connection, there is one project worthy of specific note. It is the ‘Aim Higher’ initiative, which promotes access to higher education and the professions amongst school students across the country. This is the kind of scheme which the Working Party believes could usefully be expanded and developed.
84. As mentioned, in paragraphs 106 and 107 below, a recruitment DVD is currently produced by one of the Inns, and we consider that there should be a professionally produced DVD and podcast aimed at university students, especially with those from less privileged backgrounds in mind. There appears to be every bit as much justification for producing such a DVD aimed at those still at school. Whether this would sensibly involve two different DVDs (albeit with much similar content) or a single composite DVD aimed at both groups is a matter best left to those implementing this recommendation.

An Education and Careers Ambassador

85. The realisation of our recommendations in relation to the Schools stage will be more than a one-off task. Although similar proposals have been made in the past and have not been adopted, the existence of an “ambassador” for the Bar would enable many of our educational recommendations to be more fully developed than would be possible if the recommendations were the responsibility of a Committee consisting of people with many other commitments. This ambassadorial role would foster good working relations with the world of education and develop consistent and creative links between the Bar and education, and, potentially, between the Bar and Government.
86. Such a post would demonstrate the profession’s commitment to tackling some of the most avoidable barriers to entry, as it would emphasise the genuineness of its desire to reach out to the kinds of schools and universities from which it would otherwise struggle to create any serious interest in the Bar.
87. An Education and Careers Ambassador would be dedicated to co-ordination and development of all available resources and outreach opportunities from the Bar Council secretariat, the four Inns of Court, Circuits, schools and universities. This would also involve ensuring that all schemes are quality assured and replicable, as

well as making regular use of the media and PR facilities which the Bar Council has already developed (for example, by publicising successful initiatives in the profession's own publication, *Counsel* and in appropriate media in a regular 'Good Practice' column).

88. Perhaps of all our recommendations, this is the one which may have the most substantial implication on funding. Alternative, collaborative or charitable funding may be available to support and enable this proposal, and we recommend that such alternatives should be more rigorously explored.

CHAPTER 4

THE UNIVERSITY STAGE

Introduction

89. It is widely accepted that the provision of information to university students about a career at the Bar is at present inadequate. The problem of lack of knowledge and information about the Bar faced by those from less privileged backgrounds when at school has been discussed in the preceding chapter. The problem is not much better at many universities. Many students do not, or are unable to, obtain accurate or reliable information on which to base their career choices, whether as employed or self-employed barristers, and many able students do not give any real consideration to joining the Bar.
90. In some cases this is likely to be because they simply do not know anything about the Bar. In other cases it may be because they have preconceptions that do not chime with their own backgrounds, for instance that “typical” barristers come from advantaged socio-economic groups. In yet other cases they may have been put off by inaccurate information about the profession and perhaps by distorted perceptions of the difficulties of a career at the Bar, particularly in comparison with the solicitors’ profession. This disparity is reinforced by the fact that there is a wealth of information available to students about careers in City law firms, contributed to in part by the links many law tutors have with particular law firms and the encouragement they give to students to apply to them.
91. Although the Bar Council now attends law fairs at many universities, there is evidence that, because they do not have much other contact with the Inns the Bar Council or individual Chambers, students not at Russell Group¹ universities find it especially difficult to meet practitioners and obtain practical advice on a career at the Bar. This is in fairly stark contrast with Oxford, Cambridge and London universities, where sets of Chambers and the Inns have targeted, and continue to target, the majority of their resources in terms of recruitment. In recent years there has been an increasing effort on the part of the Inns and Chambers to cover a wider group of universities. However, the Working Party believes that there is still room for improvement and that more resources need to be allocated for the recruitment events at non-Russell Group universities.
92. The Working Party recognises that Russell Group students nowadays are often more likely to be from more diverse backgrounds than in the past. Nevertheless there is still a gap to be filled. The difficulty with filling this gap is that the possibility of wider targeted recruitment is generally treated with some scepticism.

¹ The Russell Group describes itself as an association of 20 major research-intensive universities: Birmingham, Bristol, Cambridge, Cardiff, Edinburgh, Glasgow, Imperial College London, King’s College London, Leeds, Liverpool, LSE, Manchester, Newcastle, Nottingham, Oxford, Queen’s College Belfast, Sheffield, Southampton, University College London and Warwick.

Chambers and employers argue, with some practical force, that their limited resources are justifiably and most efficiently directed at career fairs and moots at Russell Group universities, where they perceive the majority of the best candidates for pupillage are likely to be studying.

93. Until a decade ago, there was a perception that students undertaking the CPE (now the GDL) would have done their research and already decided on their career path as a solicitor or a barrister, so that there was little to be gained from targeting them with more and better information about the Bar. In recent years, however, it has been recognised that whilst many of those students will have been sent down the path of the solicitors' profession at careers fairs and similar events, some are likely to be influenced by the provision of adequate information about the Bar at this stage. As a result of this, the resources that both Chambers and the Inns have allocated for GDL students have increased markedly. However we consider that more can, and should, be done.
94. Many such students will be those who had not thought of law as a career when applying for university. Many will be "late developers" who did not get the A level grades required to study law at a university of their choice and so chose to do another subject, or mature students who have experience and qualifications in other areas, all of whom may, erroneously, have dismissed the Bar as not for them. It is difficult, indeed unrealistic, to expect a profession the size of the Bar to target effectively students at university studying subjects other than law. For that reason, the Working Party feels that focusing on those who are studying for the GDL may be a practical, if not ideal, way of reducing the barriers to entry by people from these groups and that the Bar Council, the Inns, Chambers, and employers should forge closer links with GDL providers to ensure that appropriate information about the Bar is freely available to all of their students.

Existing Information Provision and Recruitment

95. The following is a summary of the information currently available for university students on life at the Bar:
 - (a) **Bar Council and BSB Website:** The Bar Council and Bar Standards Board websites provide guidance on becoming a barrister (as discussed in paragraph 48(e) above). The Bar Council has recently redesigned its website and work is under way to improve the careers information currently available, both on the site and in literature such as "It's Your Call" (a publication aimed at university students). The intention is to provide clearer information about a barrister's working life, applying for and pursuing the BVC, sources of funding and likely levels of income once in practice. This service is also aimed at A level students (see paragraph 48(d) above).
 - (b) **University Visits Scheme:** This scheme is similar to the Speakers for Schools Programme (discussed in paragraph 48(a) above), but is aimed at university students and focuses on the BVC, application for pupillages and/or mini-pupillages and work experience generally. Each year the Bar Council writes to those universities which do not traditionally have a link

with the Bar, offering a talk from a barrister. Speakers are encouraged to maintain links with their university. Data from the academic year for 2005/6 suggests that the scheme provides a useful platform but there is scope for expansion. This year, forty-one universities arranged to have such talks. The Bar Council's Recruitment and Entry Sub-Committee has, in our view rightly, decided that letters which did not result in a response should be followed up with an email and a telephone call. This is now being done. Anecdotal evidence suggests that the profession may not be sufficiently aware of this scheme and that greater publicity would result in more volunteers.

- (c) **Inns' recruitment programmes:** All of the Inns organise information and recruitment presentations, mooting/debating competitions and other events such as Q & A and advice sessions aimed at student and GDL students and legal academics but these are not co-ordinated to any extent. They also arrange mentoring schemes for students who need advice on their CVs and OLPAS applications. The Recruitment and Entry Sub-Committee is planning to establish a co-ordinated strategy in due course.
- (d) **LCAN:** The Bar Council is a member of the Law Careers Advisory Network (LCAN), which provides information about careers in the legal profession for teachers, careers advisers and students. It runs regular events for students and advisers around the country. However, this organisation is having funding difficulties and its future is in doubt.
- (e) **Financial Information:** A financial planning fact sheet for those considering a career as a solicitor or barrister has been produced jointly with LCAN and is available on the Bar Council website. It gives information about Local Authority discretionary funds, professional study loans, charities and grant making trusts, as well as the Bar Council and Inns of Court scholarships.
- (f) **Provision of Speakers:** The Bar Council, the Law Society and all Inns field speakers from time to time at conferences arranged by various bodies, such as UCAS. From time to time the Bar Council's Equality and Diversity Advisers also take part in schools conferences for ethnic minority students.
- (g) **Employers:** Employers are an important source of information about careers at the Bar, including the employed Bar. Some employers such as the CPS provide speakers to university careers services and law careers events.
- (h) **Sets of Chambers:** Many individual sets of Chambers also play an important role at the university stage by providing information about themselves and what they offer and require. Some Chambers provide university careers departments and law departments with details of pupillages and awards as well as giving presentations at law fairs, supporting and sponsoring moots and giving essay prizes. The amount of time and money that any individual set of Chambers can properly devote to such matters is obviously particularly circumscribed.

- (i) **‘Ask a Pupil’ Website:** There is a privately run website called “Ask a pupil” (www.askapupil.blogspot.com) which provides a panel of pupils to answer e-mailed questions. It is currently reporting a temporary hiatus while the organiser, who is no longer a pupil, tries to find somebody to take over the running of the site.
- (j) **Publications:** There are a number of publications which deal with specific issues. These include “Bar Vocational Course”, a Bar Council publication aimed at students, and the “Pupillages Handbook”, also produced by the Bar Council and available at www.pupillages.com “Target Law” and “Chambers’ Student Guide” are commercial publications funded principally by advertising revenues.
- (k) **Courts:** Snaresbrook Crown Court and several others hold annual open days which are hugely popular and are also very effective at acquainting people with the Bar, the courts and the justice system. There are also a number of one-off events such as the Open Day to be held in 2008 by Middle and Inner Temple (as part of their 400th anniversary of the Temple’s Charter).
- (l) **Law Fairs/Careers Events:** The Bar Council attends law fairs and careers events at universities and other venues each year. Some university law societies also ask the Bar Council to take part in their careers events, by way of a talk by a barrister or running a workshop. There is often a shortage of barrister representation at these fairs, although Circuits and Specialist Bar Associations are asked to assist where possible.
- (m) **Graduates Advisory Service:** The Association of Graduate Careers Advisory Services (“AGCAS”) is a collaborative body for all higher education careers professionals. The primary aim of AGCAS is to help members (careers advisors) improve the accessibility and quality of careers information, advice and guidance. A member of AGCAS is also on the Recruitment and Entry Sub-Committee. The Bar Council and the Law Society are both represented on the committee. The Bar Council attends the AGCAS meetings regularly.
- (n) **Denham Initiative:** As also mentioned in paragraph 48(g) in connection with schools, a scheme has recently been introduced to link universities with secondary schools in England. The aim is to broaden the social range of students by attracting more students from disadvantaged socio-economic backgrounds.

Recommendations as to Universities

- 96. The Working Party considers that there is a significant need to provide more comprehensive and accurate information about the Bar, and that there is also a need to co-ordinate what is currently provided. Our recommendations can be summarised as follows.

97. **Recommendation 8:** The Bar Council and the Inns should address the technical issue of ensuring that students using a variety of search terms and commonly used search engines which will be likely to find the Bar Council's and/or Inns' websites at or near the top of their search results.
98. **Recommendation 9:** The Bar Council and the Inns should collaborate to produce a DVD and podcast aimed at university students. The DVD should be appropriately distributed and publicised in order to reach a large number of potential applicants to the Bar over a number of years.
99. **Recommendation 10:** The various initiatives currently undertaken by the Inns, the Bar Council, employers and individual Chambers should be identified, published and co-ordinated, so that gaps can be identified. Inns, Circuits, Chambers and Specialist Bar Associations should be invited to encourage their members to forge links with local universities and GDL providers, with the aim of providing more and better quality information to the students about a career at the Bar.
100. **Recommendation 11:** There should be more organised contact between local judiciary and students, and between the employed Bar and students, including more speaking engagements.
101. **Recommendation 12:** Chambers should be encouraged to offer more mini-pupillages, including those for shorter periods (2-3 days, rather than the more usual full week). Consideration should be given to obtaining funding for travel and accommodation expenses of those attending mini-pupillages.
102. **Recommendation 13:** Training days for university career advisers should be organised by the Bar Council and/or the Inns. Career advisers should also be given contacts for queries in the Bar Council and the Inns' Education and Training departments.
103. **Recommendation 14:** There should be closer liaison between the profession and law tutors and lecturers from all universities. The Bar Council's Recruitment and Entry Sub-Committee, the Inns, and the Circuits should arrange for closer liaison with the Association of Law Teachers and the Society of Law Scholars as well as the Learning and Teaching Support Network, a resource for lecturers.
104. **Recommendation 15:** A scheme of student ambassadors should be created to enable students to attend training seminars with the Bar Council and Inns with a view to their then providing a focal point for information at their universities.

Improving Web-Based Information

105. There is an increasing number of websites providing careers advice. These are mainly run by academic institutions, employment agencies and other independent organisations. The information on these sites is not necessarily as up to date,

accurate, or clear as that available on the Bar Council's and the Inns' websites. However, it became apparent that when keywords such as "*Becoming a Barrister*" or "*How to Become a Barrister*" were typed into Google, most of the website links which appeared on the first and second pages of search results belonged to these organisations and not to the Bar Council or the Inns (with one exception). Some simple steps have already been taken to begin to remedy this but it is suggested that the Bar Council and the Inns should give consideration to the technical issue of how to ensure that students using a variety of search terms and commonly used search engines will be likely to find the Bar Council's and the Inns' websites at, or at least near, the top of their search results.

Producing a DVD

106. With the exception of a recruitment DVD produced by one of the Inns, there is no other information available in electronic form. A DVD which provides a guide to life as a barrister should be produced, probably by the Bar Council in conjunction with the Inns, and made widely available to universities and GDL providers, as well as schools. It could also be made available as a podcast on the Bar Council and other appropriate websites. It is essential that such a tool should be professionally (though not extravagantly) produced, and that it uses a diverse group of practitioners with some understanding of those of school and university age people to promote the Bar. It is important that this process provides appropriate role models for those whom the Bar is seeking to encourage.
107. We believe that the Inns and the Bar Council should seriously consider collaborating to produce a DVD, appropriately distributed and publicised and available also as a podcast. This is likely to be a time and cost-effective way of reaching a large number of potential applicants to the Bar over a number of years, and should justify the initial outlay in time and money.

Co-ordinating Recruitment Initiatives with Educational Institutions

108. One of the problems with provision of information to universities and GDL providers is that there is no central co-ordination. This results in some institutions (notably Oxford, Cambridge and London Universities) receiving a wealth of information from, and contact with, the profession, almost to the point of saturation, whilst others receive little or none. The Working Party considers it essential to improve the provision of information to university students, and that it is fundamental to this for there to be some co-ordination or, at the very least, identification and publication of the various initiatives currently undertaken by the Inns, the Bar Council, employers, and individual Chambers, so that gaps can be identified, and filled.
109. There are various ways that this might be achieved, and the Bar Council, the Inns, and the Circuits all have important roles to play. The Bar Council's Recruitment and Entry Sub-Committee (RESC) has already started work in this area and we believe that this should continue and expand, so that the RESC becomes the central

point of focus for co-ordinating and cementing good and continuing working relations between the Bar and the world of education. In order for the RESC to be credible and effective in this role, we consider that each of the Inns must be represented on it, so that it becomes, in effect, a joint enterprise between the Inns and the Bar Council.

110. The collation of information and the co-ordination of visits to educational institutions will be an important aspect of this exercise, and the RESC will require not only considerable logistical support but also full and timely co-operation between Chambers, employers, the Inns, the Circuits, the Specialist Bar Associations (SBAs), and the Bar Council if its purpose is not to be frustrated. Fundamental to its success will also be appropriate resourcing at an administrative level. We recommend that the Bar Council and the Inns work together to take the lead in ensuring this is achieved.
111. As the RESC is in the early stages of its work, it seems to us to be appropriate that, in the meantime, the Circuits and SBAs should be invited to encourage their members to forge links with local universities and GDL providers, with the aim of providing more and better quality information to students about a career at the Bar, and, of course, in their Chambers in particular.

Links with Universities and Recruitment Visits

112. The Inns and the Bar Council already do a certain amount of work with the non-Russell Group universities. Various ways to develop this work have been suggested, such as dedicated web pages with links right across the various networks as well as encouraging Chambers or groups of Chambers (particularly those physically outside, or with links outside, London) to foster links with universities in their locality.
113. Some non-Russell Group universities already have links with individual sets of Chambers. Law lecturers from such universities visit Chambers, and barristers from such Chambers, as well as employed barristers, judge mooted competitions. Such contacts should be developed through the Circuits, and through large employers who could take on the responsibility of dealing with the new universities. It should also be possible to organise contact with the local judiciary via the local Crown Court and the Judges' lodgings in the locality. Judges and employed barristers should be approached and asked to speak to students.
114. The Working Party recognises that there are practical difficulties in spreading the net so wide that it includes every university in England and Wales, bearing in mind the number of universities and the number of barristers able to take part. There is a key role here for the judiciary at all levels. We are aware of a number of instances where highly beneficial relationships have been built up between individual Crown Courts and universities. In Canterbury, there are opportunities for visits and marshalling, as well as moots judged by both Criminal and Civil Judges, including both Circuit Judges and District Judges. We would hope that this could be extended to many more courts, and to Judges at all levels.

Mini-Pupillages

115. There are a limited number of mini-pupillages available and there is increasing competition for them. One way of increasing the number of mini-pupillages would be to try to increase the number of places by offering more but shorter placements (perhaps 2-3 days, rather than the usual full week). Consideration should also be given to obtaining funding for discretionary payments for travel and accommodation expenses of those attending mini-pupillages, which is commonly a problem for those who come from disadvantaged socio-economic backgrounds.
116. The current system for selecting mini-pupils is fairer and more open than it used to be. However it is widely known that most of those who apply for mini-pupillages come from advantaged socio-economic groups and/or commonly have contacts with a member of the Chambers concerned. Accordingly there is a real need to publicise mini-pupillages more widely. Given that those from socially and economically disadvantaged groups can often be late developers, it is important that the steps are taken to make this information more readily available to them. One suggestion which should be considered is the introduction of a selection system for mini-pupillages, but it would be dangerous to be too prescriptive in that connection, as an additional administrative burden on Chambers could act as a deterrent, and could therefore result in a reduction in the number of places available.
117. Links with relevant employers should be explored to consider work experience with employed barristers.

Training for Career Advisers and Links with Law Lecturers

118. Currently all Inns and the Bar Council have contacts with career advisers in one form or another, but this is not co-ordinated, and it is also often dependent on the advisers' own initiatives. We recommend that such contact arrangements are provided in a more co-ordinated and structured way, for example by organising training days for university career advisers. This could be run by either the Bar Council or by the Inns (or jointly). Career advisers could also be given a point of contact for queries in the Inns' Education and Training departments.
119. The Working Party considers that fuller and wider discussions are needed with law lecturers (and, in so far as it is feasible bearing in mind the relatively small size of the Bar, lecturers in other subjects) about the advice they should give to students on a career at the Bar. After all, it is an obvious and excellent way to reach promising students, as law lecturers are in an ideal position to identify and encourage those who have the qualities to succeed at the Bar. All four Inns have arrangements in place for links with lecturers. Historically the major part of this effort has tended to be concentrate on the Russell Group. Although in recent years the scope of this effort has steadily widened, there is still room for improvement.
120. Fostering greater and closer liaison between the profession and law tutors and lecturers from all universities could do much to correct misconceptions about the Bar and to ensure that balanced advice was given, or at least was available, to students. The best ways to reach lecturers would probably be through the

Association of Law Teachers and the Society of Law Scholars as well as the Learning and Teaching Support Network, a resource for lecturers. We recommend that the Recruitment and Education Sub-Committee, the Inns, and the Circuits take this forward.

Ambassadors

121. It will never be possible for the Bar to visit all universities annually, but the instigation of a scheme of student ambassadors or liaisons might be an effective means of disseminating information. It may be a good idea if these students attended training seminars with the Bar Council and Inns, which would assist them to act as a focal point for information at their university. This proposal would also be a matter for the Recruitment and Education Sub-Committee, and we suggest that they should give it consideration.
122. In our Recommendation 7 and paragraphs 85 to 88 above, we suggested that the Bar Council appoint a person to act as an ambassador to represent the Bar at schools. We envisage that such an ambassador's role would extend to universities as well as to schools.

CHAPTER 5

THE BAR VOCATIONAL COURSE

Introductory

123. The issues concerned with the Bar Vocational Course (BVC) are numerous and complex. A Working Party of the Bar Council's Training for the Bar Committee, under the chairmanship of Richard Wilson QC, has undertaken a very detailed examination of many of the issues involved. We have seen a copy of the penultimate draft of the Wilson Working Party's report dated June 2007, and entitled "The Bar Vocational Course (Course Specification, Standards and Pupillage)". At the time of the preparation of this Report the final version of the Wilson Report has yet to be published. However, we understand that the recommendations will be the same as those contained in the penultimate draft, which are annexed to this Report as Appendix 9.
124. Shortly before the preparation of this Report, the Bar Standards Board formed a committee, under the chairmanship of Derek Wood CBE QC, to review all aspects of the BVC. The Wood Committee has been set up with a view to informing and assisting the BSB when it comes to appoint, franchise and validate BVC providers with effect from 2010. We understand that the Wood Committee has been asked to report by early summer 2008.
125. The Working Party welcomes both these initiatives. It is clear that there are many aspects of the BVC which give rise to problems, some of which ought to be soluble, and the remainder of which should be capable of alleviation. The work that has gone into the Wilson Report is admirable and much of its reasoning is compelling. We hope that the Wood Committee will look carefully at its conclusions, particularly those concerning the detailed content and standards of the BVC. For reasons that will become apparent, we are not, however, in a position to endorse unequivocally all the recommendations of the Wilson Report.
126. Given the work that has already been done by the Wilson Working Party, and the work that is to be done by the Wood Committee, it would be inappropriate for us to go into too much detail in our recommendations relating to many of the areas covered by this chapter. The Wilson Working Party has considered, and no doubt the Wood Committee will consider, many aspects of the BVC in rather more detail than was possible or would have been appropriate for this Working Party.
127. It is nonetheless inevitable that there is some overlap between the subject matter of the Wilson Report and our work, as there is between our work and that which will be carried out by the Wood Committee. It is obviously desirable that the degree of overlap is kept to a minimum. However, the BVC plays a central role in relation to entry to the Bar, and the responses to our Interim Report, and other work we have done, indicate that feelings about the BVC run high. In those circumstances, to omit any discussion of the BVC itself would be a mistake, and we think it right to make some specific recommendations in that connection. Where these also feature in the Wilson Report, we have cross-referenced to that report's recommendations.

128. It is obvious that this Working party should ensure maximum possible co-ordination with the Wilson Working Party and the Wood Committee. We have been assisted in that connection by the presence of two members of the Wilson Working Party as members of this Working Party, and by having as contributing observers at our meetings three representatives of the BSB, one of whom, we understand, will also be serving on the Wood Committee.
129. Following the list of relevant recommendations, this chapter contains specific sections on:
 - (a) The BVC generally.
 - (b) Should the entry requirements for the BVC be changed?
 - (c) A funding scheme for the BVC year.

Recommendations as to the Bar Vocational Course

130. This section summarises our recommendations on all aspects of the BVC.
131. **Recommendation 16: The Bar Council and BVC providers should arrange matters so that an applicant for the BVC knows whether she or he has a pupillage offer before risking the loss of deposit for the BVC.**
132. **Recommendation 17: The BVC must be intellectually challenging and of a high quality, and must provide a high standard of education for able people.**
133. **Recommendation 18: We support the Wilson Report's recommendation that the BVC should continue to last for 32 working weeks, and not be reduced in length.**
134. **Recommendation 19: We support the Wilson Report's recommendation that the BVC should, where feasible, be delivered to a Masters-level standard, and that it should have the facility of being extended so as to lead to a Masters degree.**
135. **Recommendation 20: The BVC should be subject to a uniform final examination across all providers, set centrally and marked according to a centrally regulated and monitored standard.**
136. **Recommendation 21: The pass rate for the BVC should not be so generous as to reduce the credibility of the course.**
137. **Recommendation 22: The grading of the BVC must be clearer so as to assist potential recruiters and employers.**
138. **Recommendation 23: Consideration should be given to ways of expanding more flexible learning into the non-practical aspects of the BVC, so long as this does not in any way compromise standards.**

139. **Recommendation 24:** There should be no specific limit on the number of those doing the BVC.
140. **Recommendation 25:** Investigations should be made as to the feasibility of introducing an entrance examination, to provide a level playing field for all those considering applying for the BVC.
141. **Recommendation 26:** BVC providers should be required to implement an appropriate English language test for those for whom English is not their primary language.
142. **Recommendation 27:** Research should be undertaken to establish (a) whether it would be unfairly detrimental to any groups for a qualified 2:1 BVC entry condition to be imposed, (b) the extent, if any, to which the presence of students on the BVC with degrees lower than a 2:1 adversely affects the performance of others, and (c) the relative extent to which people with a 2:2 and no post-graduate degree obtain pupillages and tenancies.
143. **Recommendation 28:** Depending on the results of the research mentioned in recommendation 27, the Bar Standards Board should consider raising the entry requirement to the BVC to a 2:1 degree standard.
144. **Recommendation 29:** In the meantime, BVC providers should be required to inform, both orally and in writing, any applicant who does not have a 2:1, how many and what proportion of its BVC graduates in the past four years who have not been awarded a 2:1 (or a first) obtained a pupillage and entered practice.
145. **Recommendation 30:** A loan scheme should be set up to offer loans on preferential terms, alongside the Inns' scholarships and award schemes, to facilitate studying for and entry to the Bar.

The BVC generally

146. As already mentioned, it is not within the remit of this report to examine in any great depth the quality of the BVC, not least in the light of the very careful analysis, and the well-reasoned and generally convincing suggestions, contained in the Wilson Report.
147. A considerable number of those who, at great expense and effort, pay for and undertake the BVC for nearly a year never manage to find a pupillage. Stories of the plight of such BVC graduates no doubt serve as a real disincentive to many people thinking about entering the profession. This disincentive must be disproportionately greater for those who already have the highest mountain to climb to get to the stage where doing the BVC is even a remote possibility, namely, those from less privileged social or economic backgrounds, or those with other challenging aspects of their lives, such as childcare needs or disability. Indeed, for such people, the BVC, even if they have a firm prospect of pupillage, may well be a forbidding enough challenge.

Cost of the BVC

148. The cost of the BVC depends to some extent on the provider. Currently, it costs up to £13,000 to complete a 32-week course. Even viewed on its own, that is a large sum for a person to pay, particularly if she or he has no other sources of income. It is even more of a liability if one bears in mind the cost of accommodation and food and (in some cases) child care and the like. In addition, many of those studying for the BVC will already have a substantial liability for repayment of student loans. We deal later with possible ways of alleviating this burden; in this passage of the Report we are concerned with the cost of the course.
149. In the light of our remit, and of the time and resources available to the Working Party, we are not in a position to say whether the cost of the BVC to students is fair in the sense of reflecting the cost to providers. A number of people have said that it should be cause for some concern that a course lasting little more than 60% of a calendar year, and which, at least in general, is the subject of significant adverse criticism, should cost so much. However, it would be quite unfair to the providers if we were to express a view on the point, as we have conducted no research on the issue. Nonetheless, it would be wrong to ignore the point as it has been mentioned to members of the Working Party by a number of barristers. It may well be an issue which the Wood Committee will think it appropriate to examine.
150. One point which should be mentioned, and which we touched on in the Interim Report, concerns the non-returnable deposit which BVC providers require. The level of deposit appears to vary. Our primary concern in connection with this deposit is in relation to those students who do not wish to undertake the BVC unless and until they have a pupillage arranged. The great majority of BVC students start the course without knowing whether they will ever have a pupillage, and some of those are offered a pupillage during the course. However, a lucky minority are offered a pupillage before embarking on the BVC.
151. Some prospective BVC students are not prepared to embark on the course unless and until they have a pupillage offer. We suspect that many of these students will be the financially less fortunate. Particularly in their case, the imposition of a non-returnable deposit at a time when their pupillage applications are still awaiting determination seems an unfair and discriminatory hurdle. We appreciate that there is a time by which the providers need to know how many students will be attending their courses. Equally, we appreciate that Chambers need to organise their recruitment of pupils in a sensible and structured way. We would therefore propose that the providers and the Bar Council liaise so as to ensure that deposits do not have to be paid, or at least do not become non-returnable, in respect of a course until that year's pupillage round has been completed.

Duration and Quality of the BVC

152. There is obvious and real attraction in the argument that the BVC should be as short as possible in duration, in order to limit students' expense and time away from other work. More than one respondent to the Interim Report considered that a chief barrier to entry was that the BVC was too long (or even, in the words of one

respondent, “spun out” by providers), and involved a considerable and unjustified expense of time and money. However, this was not a majority view among the respondents, some of whom came down very strongly against reducing the length of the course.² What was a clear, heartfelt and consistent concern of the respondents to the Interim Report was that there should be an improvement in the quality and standard of the BVC.

153. Having considered the issue, we are of the view that minimising the BVC’s length is not an appropriate course to take. Our approach, instead, is to endorse many of the recommendations in the Wilson Report that should help to achieve what we believe to be an important aim, which is to establish the BVC as a higher quality and more widely respected course. There can be no doubt that the function of the BVC is to provide the best possible preparation, in the form of education and training, for a career at the Bar. However, that does not detract from the fact that, if it were a high-quality and widely respected course, that would help reassure those considering taking the course that their employment prospects, whether at the Bar or elsewhere, would be much improved at the conclusion of the course.
154. In other words, we would, generally speaking, support proposals which would improve the quality, rather than reduce the length, of the BVC, thereby enhancing its status and acceptability. This is, we believe, a factor of central importance in relation to the question of who is encouraged to attempt – and who is dissuaded from attempting – entry to the Bar at the postgraduate phase of education. We believe that increasing the quality and standard of the BVC would serve two functions. First, it would ensure a better standard of preliminary training for those who start to practise at the Bar, whether self-employed or employed. Secondly, it would enhance the recognition and acceptability of the BVC outside the legal profession, which should help reassure those considering doing the BVC that the qualification will be good for many other forms of professional employment should they not obtain, or not wish to obtain, a pupillage.
155. The Working Party has also considered the notion of one or more providers having a variable duration course, which would involve, for instance, offering entrants the option of a 16-week course, as an alternative to the present 32-week course. We are of the view that such an idea should be rejected. Even if it were acceptable to one or more providers, it could (especially if standards on the course are increased) prove a trap for some entrants, particularly those anxious to save money, and therefore the very people we are primarily concerned to encourage. Further, it could lead to two classes of BVC graduate, at least in the eyes of Chambers and prospective employers; this could also well redound to the disadvantage of those from less privileged educational backgrounds.

² E.g. Inner Temple’s response, p.8.

156. We therefore support the recommendation in the Wilson Report that the BVC remain a course of at least 32-weeks in length (excluding vacations) with a comparable minimum notional study time of 1,200 hours.³

Level of Course – Masters Degree

157. A particularly strongly expressed criticism of the BVC in the responses to the Interim Report was that it was not readily understandable by potential employers outside the legal profession. One strongly worded opinion was that “*one of the areas of dissatisfaction with the BVC is that the qualification at the end of the course is worthless other than for the purpose of being called to the Bar*”.⁴ Another respondent organisation said that it did not believe the BVC as currently taught was transferable to employment beyond the Bar.⁵
158. We therefore support the Wilson Report’s recommendation that the standard of the BVC should not merely be improved, but that the BVC should become “*a worthwhile stand-alone qualification*”.⁶ In particular, we support the suggestion in the Wilson Report that this may most sensibly be achieved by raising the standard of the BVC to that of an FHEQ Level HE4 Masters-level qualification, with the possibility of extending the course so as to enable graduates to attain a Masters degree.⁷
159. We understand that many aspects of the current BVC are delivered to Masters level in practice. We would certainly encourage any proposal that resulted in all aspects of every BVC, in so far as it is appropriate, being delivered to that standard. That would be one way of ensuring an improvement in standards, although, as reading the Wilson Report establishes, it would very probably not be enough on its own to achieve the necessary reforms to the BVC.
160. We would also endorse the idea that all Bar Vocational Courses should be capable of being “topped up” or extended to enable the award of a Masters degree. The reason that we would not recommend this as an automatic feature of the BVC is that a Masters degree requires a longer course than the current 32 weeks, namely a full academic year, which would carry with it more cost in terms of time and money. However, the ability to extend a BVC qualification to a Masters degree may be of particular value to those who do not go on to practise at the Bar. Non-legal

³ Report of the BVC Working Party of the Bar Council’s Training for the Bar Committee, chaired by Richard Wilson QC, June 2007, (Wilson Report): paras.43-49.

⁴ Response of Gray’s Inn, 22 May 2007, para.11.

⁵ Response of the Middle Temple Students Association (ICSL), page 7.

⁶ Wilson Report, paras.140-143.

⁷ Wilson Report (*Ibid*), paras.50-59. The argument is very thoroughly examined and alleviates the need to revisit such examination here.

employers who do not currently recognise the significance of the BVC as a qualification may be more impressed by a Masters degree.

One Examination, one Standard

161. A further Wilson Report recommendation that we support is that there should be a uniform final examination taken by all students studying at every BVC provider. To quote from the Wilson Report:

*“Consideration should be given to there being only one “Finals” examination for all students on the BVC, irrespective of the number of institutional providers. One Final examination would ensure a level playing field for all students as well as a national standard which would assist not only prospective applicants for the BVC when choosing between different providers, but would also be helpful to sets of chambers when assessing candidates for pupillage.”*⁸

162. The Wilson Report goes on to consider the logistics of central examination-setting and a system of centralised regulation and monitoring of marking. The Bar Council and the BSB, and possibly the Inns, would have to be involved in the setting, monitoring and marking of the examination, even if only in an advisory or supervisory capacity. Whatever the details of what is finally resolved, this Working Party believes that achieving an objective, universal standard for the BVC can only improve its value and standing, as well as helping to achieve a level playing field.
163. Such a measure, particularly if coupled with improvements to the quality of the course, would also serve to impact on the level of teaching on the BVC. Again, the standard of teaching was the subject of more than a few adverse comments from respondents to the Interim Report and others with whom members of the Working Party have talked over the past year. For instance, one key respondent organisation (all of whose members had recently taken the BVC at a variety of institutions) stated, *“the need for a degree of standardisation across BVC providers is trumped only by the requirement for a drastic improvement in the quality of teaching”*.⁹

The Pass Rate and Marking Classification

164. Early in this Working Party’s life, we considered a valuable briefing paper on the BVC¹⁰ that, among other things, reflected concerns about the pass level of the BVC and meaningfulness of the final BVC grading. Since then, we have heard nothing that seriously challenges its observations about the relative lack of discrimination in

⁸ *Ibid*, para.101.

⁹ Response of the Middle Temple Students Association (ICSL), page 1.

¹⁰ Presentation by Debra Powell and Sophie Shotton to this Working Party (23 November 2006).

relation to how many students pass the course – the vast majority – and the reliability of grading so far as final marks are concerned. The present very high pass rate was said, for example, to sit uncomfortably with the much lower pass rate for the well-known and highly regarded New York Bar examination.¹¹ For example, one respondent to the Interim Report invited us to consider recommending “*increasing the failure rate*” of the BVC,¹² and another confessed to being “*suspicious about pass rates*”.¹³ A further substantial respondent organisation simply stated: “*We consider the standards for passing the BVC to be too low*”.¹⁴

165. The current final marking classification results in a very high proportion of BVC students receiving the “Very Competent” grade. Consistent reports received by the Working Party support the conclusion that many who receive this grade are, on any fair view, no better than barely competent. It also seems to be widely thought throughout the Bar that the lesser grade of “Competent” in fact represents a standard that should instead (and we understand that, it is, in practice, treated as such) be regarded as a fail, or at least a level at which the student is not yet competent in the sense of not being ready for pupillage without further training and assessment. This brings the BVC into a degree of disrepute, and it is also unfair to those who actually merit their “Very Competent” or “Competent” grades.
166. We further consider that there is much to be said for details of individual marks on each paper, or even transcripts, being supplied to BVC graduates, in addition to the “Very Competent” and “Competent” grades. This suggestion is consistent with the very recent proposals made in relation to university degrees in the Burgess Report published after a three year review of university degrees. It would give BVC graduates, Chambers, and prospective employers a much better picture than is presently available of the particular graduate’s performance in the BVC final examinations.

Part-time BVC and Other More Flexible Ways of Learning

167. Some providers offer flexible ways of undertaking the BVC, including a part-time version; other providers are, we understand, considering offering such a facility. We support any expansion of such schemes, provided that quality and standards are not detrimentally affected. We agree, however, with the opinion expressed by many respondents to the Interim Report that there would be considerable difficulty in conducting much, if not all, of the practical skills tuition as distance-learning.¹⁵

¹¹ A point emphasised in the response of the Young Barristers’ Committee.

¹² E.g. the Response by 4 Pump Court chambers, at para.30.

¹³ E.g. the Response of Guy Mansfield QC.

¹⁴ Response of the Employed Barristers’ Association, p.11.

¹⁵ E.g. the Response of James Petts, 55 Temple Chambers, p.2.

Should the Entry Requirements for the BVC be Changed?

168. Nobody has suggested that it would be appropriate to seek to increase the number of people studying for the BVC. This is scarcely surprising given (a) the discussion in the immediately preceding paragraphs and, (b) the fact that there are approximately four times as many BVC graduates each year as there are pupillages available for them. In these circumstances, there can be no question of recommending that BVC providers lower the standards that they currently impose for entry onto the course. In that connection, the Working Party understands that the current position is as follows. All providers have an academic entry requirement: most require at least a 2:2 degree, whereas a few require a 2:1, but no provider is by any means completely rigid in its requirement. All providers also have an English language requirement, although it does not always appear to be rigorously administered.
169. A significant number of the respondents to the Interim Report, along with many others to whom we have spoken, consider that there are too many BVC students, which is unsurprising for the reasons mentioned in paragraph 168. However, it is right to mention that the concern based on comparing the total number of BVC students with the number of pupillages may result in somewhat over-stating the problem in so far as it is based on the annual figure of around 2,000 BVC graduates. BVC students include not only those hoping for a pupillage in England and Wales, but also overseas students, and even some home students, who have no real intention of practising at the English and Welsh Bar. Nonetheless, there is no doubt that of the BVC graduates wishing to do so, many more than half (probably more than two-thirds) never succeed in obtaining a pupillage.
170. Accordingly, the issue which has to be addressed is whether, and if so on what basis, the entry requirements for the BVC should be made stricter or limited in some way. There are four possible ways of limiting or reducing numbers, namely:
- (a) Imposing a specific numerical annual limit on students;
 - (b) Introducing an entrance examination;
 - (c) Tightening up on the current English language requirement;
 - (d) Raising the current academic entry requirement.
171. Each of these possible options will be considered in turn. The first, option (a), which involves imposing a specific limit on the number of students permitted to enrol on the BVC each year, is the simplest and most prescriptive. The others involve imposing a new entry requirement, or enhancing current entry requirements, without imposing a specific overall limit on numbers.
172. As already mentioned, it appears to us that the standard of the BVC needs to be both equalised across providers and raised, and that there are considerably (around four times) more BVC graduates than there are pupillages available for them. There is therefore a powerful case to be made for raising the standards for entry. If this is to be done, then either a new entry exam must be devised, which is option

(b), or else the current two requirements must be revisited, which is envisaged by options (c) and (d).

173. The guiding principle must, however, be based on what standard of educational attainment is necessary in order to practise to a proper standard at the Bar. Any other principle would exclude, rather than allow, access to those from less privileged backgrounds. The precise standard of attainment necessary for practice at the Bar is beyond the scope of this Report, but has been dealt with in detail in the Wilson Report.

A Specific Numerical Limit

174. In recent years, around 2,000 students have undertaken the BVC each year and only between one third and one quarter of them have been able to practise at the employed or self-employed Bar. The questions are (a) whether the present state of affairs is appropriate or acceptable and (b) if not, whether a limitation can in practice be imposed.
175. There is, we accept, a real argument for contending that the number of people enrolling for the BVC should be reduced, possibly drastically. The proponents of a limitation on numbers argue that it is unfair to allow students to take large loans to undertake the BVC when they have no real prospect of practising in the profession, and that it is wrong to train more barristers than are needed by the profession. Furthermore, the present number of BVC students severely stretches the financial and human resources which the Inns and the Circuits have at their disposal for the vital task they perform of introducing students to the life, ethics and ethos of the Bar. This pressure on resources in turn prejudices a very important aspect of training for the Bar.
176. There is undoubtedly a serious case to be made out for introducing a specific limit on numbers. However, at least in the absence of a very substantial change in the number of available pupillages (which we consider to be inconceivable in the near or medium term, even if all our recommendations in relation to pupillage are adopted), the Working Party rejects the proposal that there should be a specific restriction on the number of people permitted to do the BVC. Our recommendations on entry requirements for the BVC (as set out in paragraphs 182 to 196 below), and our proposals that the standards of the course be improved (as set out in paragraphs 157 to 166 above), should go some way to meeting the concerns about numbers. But even if all these recommendations are fully implemented, there would still be likely to be substantially more BVC students than are needed to fill available places in the profession. Nonetheless, we consider that, provided the right entry requirements are applied to ensure that every BVC student has the ability to become a practising barrister, and provided that full information about the prospects of success are made available to each prospective student, an artificial restriction on numbers would be inherently difficult to justify, and in particular that it might well risk limiting access to those from poorer socio-economic groups.

177. If the restriction was simply based on the stipulation that only those who had got or would get a pupillage could enrol for the BVC, it would seem contrary to the interests of the Bar and to be unfair on many potential barristers, especially late developers. It would mean that many of those who had the potential of success, even outstanding success, at the Bar would be prevented from competing at a very early stage. In the view of the Working Party, this would be anti-competitive, unfair on many potential barristers, particularly those from less privileged backgrounds, and contrary to the public interest.
178. As we have mentioned, those from lower socio-economic backgrounds, have generally had far less exposure to a professional environment, and to the Bar in particular, when they embark on the BVC. The course may, therefore, well be relatively more important in their progression towards a career at the Bar than it might be for many of those from more privileged backgrounds. On that basis, if selection takes place too early, students from less privileged backgrounds could very well be disproportionately disadvantaged.
179. Further, it is to the obvious advantage of the quality of the profession (and hence in the public interest), and it is consistent with the objectives of this Report for there to be healthy competition for pupillage, tenancies and employed practice. This means that, although there will be many who are disappointed, it is inevitable that by no means all BVC graduates obtain pupillage, and not all pupils get taken on in Chambers. That is not to say that the current number of BVC students is justifiable. However, as already indicated, we believe that the measures suggested elsewhere in this chapter should serve to reduce over time the number of entrants onto the BVC, thereby reducing the number of disappointed BVC graduates and alleviating the pressure on the Inns and the Circuits.
180. We should conclude this section by considering whether numbers could, in practice, be artificially limited even if that were thought desirable. The Office of Fair Trading (OFT) has taken some interest in the BVC in recent years, and has expressed concerns about the anti-competitive effect of limiting BVC numbers. The OFT has, however, never made any formal pronouncements in this area. The Bar Council has obtained informal competition law advice from time to time, and it is clear that the issue is far from easy. A detailed exposition of the legal issues is beyond the scope of this Report.
181. We have been prepared to assume that it might be possible to persuade the OFT to accept a limitation on BVC numbers if a compelling and cogently argued case were made out to the effect that a limitation was necessary. However, we do not believe that, in the result, an artificial limitation on numbers is necessary. As already stated, our recommendations should, if faithfully carried out, result in a reduction in numbers over time, without artificially imposing a restriction which might be perceived as anti-competitive, and, as importantly, might actually operate in practice to impede access for able students from less privileged backgrounds.

An Entrance Exam or Aptitude test

182. The Wilson Report recommends the use of an entrance examination, in the form of an aptitude test or the like, for the BVC. There is no doubt that this is a very attractive idea. Unlike entry requirements based on other abilities, such as past academic achievement, an aptitude test, if fairly and appropriately targeted, should identify those who have the requisite talents to succeed at the Bar and those who do not. It would therefore provide an accurate guide to those people who wish to embark on a career at the Bar and to the providers of courses to such people. Such a test would, we assume, work on the basis that those who failed it would have no, or at least very poor, prospects of succeeding as barristers. In principle, therefore, it is hard to quarrel with the introduction of such a test.
183. However, at least on the basis of information currently available to us, we cannot recommend such an entrance examination at this stage. It would be excellent if a test could be devised which was effective, objective, and non-discriminatory. But the design of such tests has proved elusive and controversial in the past, in that they have appeared unreliable and unbalanced, at least to many people. While we have not embarked on a thorough investigation of the current state of such tests, we have not received any clear information that such concerns have been now dealt with. It would create far greater problems to introduce an inadequate test than to have no test at all. On the basis of the information currently available, we believe that, at least for the moment, language and academic attainments should remain the requirements for entry to the BVC.
184. However, it would certainly be sensible to investigate the feasibility of devising and introducing such a test. There would plainly be a very strong case to be made out in its favour, provided that it was effective, objective, and non-discriminatory, as well as commanding public confidence. It is a topic which we think would be worthy of serious investigation and consideration by the Wood Committee.

The Language Requirement

185. The Working Party considers it self-evident that no one should be allowed to embark on the BVC without having an excellent command of English, subject, of course, to the duty to make reasonable adjustments in respect of practitioners with disabilities.¹⁶ It would be unfair to encourage, or even to permit, a student, with an inadequate command of English to spend a year of his or her life and up to £13,000 in fees for the BVC, given that both legal analysis and advocacy both require an excellent command of English. The evidence before us also indicates that it would also be unfair on other students, particularly when they are being taught in small groups or seminars, if one or more of their number has an inadequate command of English: it holds everyone else back.

¹⁶ We recognise that deaf practitioners may communicate in British Sign Language (BSL) and adjustments would have to be made to the language requirements to accommodate BSL users.

186. This opinion does not seem to be controversial, which is scarcely surprising. As we understand it, BVC providers take some steps to satisfy themselves that candidates from abroad have an adequate command of English. However, it appears, from consistent and frequent reports from recently qualified students, that most, indeed possibly all, BVC providers admit students whose English is well below the requisite standard. It therefore follows that the English language check applied by some, and possibly all, of the providers is inadequate in its level or in its manner of application – or both. Whatever the reason for this, it appears plain that a significant number of people gain admittance to BVC despite having an inadequate command of the English language.
187. In these circumstances, the Working Party recommends that BVC providers are required to implement an effective English language test. Care will need to be taken to ensure that the candidates required to take the test are appropriately and fairly selected, and that the test is efficiently applied, not least because there will be a cost associated with taking the test, which will fall on the applicant. Further, the particular test selected must be sufficiently robust to ensure that an applicant's English reaches the necessary standard before she or he is permitted to embark on the course.
188. Other professions, of course, have had to address this issue. The GMC's experience is that it is likely to be appropriate to ask all applicants, whose place of primary qualification (degree or equivalent) is a country where the primary language is not English, to undertake an English language test. Even where an applicant has been educated in such a country, it may well be inappropriate to require such a test to be taken if he or she has undertaken all studies in institutions where the language of instruction and examination is English. These are details that would need to be considered in formulating any final arrangements. As to the method of assessment, consideration should be given to adopting the International English Language Testing System (IELTS) test, given its reputation for rigorousness and effectiveness and its widespread use.

The Academic Requirement

189. The evidence and responses to the Interim Report have caused us to consider whether there should now be requirement for entry onto the BVC that a person has at least a 2:1 (or a Masters), allowing for some discretion in appropriate cases – i.e. a qualified 2:1 entry requirement.¹⁷ The issue merits very careful consideration not least because it appears that close to 30% of those who enrol for the BVC have a 2:2 or a third. Accordingly, the imposition of a qualified 2:1 requirement would eliminate some 600 potential students a year, and would therefore have significant implications for a relatively large number of people, as well as for some of the BVC providers.

¹⁷ Where there have been some specific disadvantages experienced, for example illness at a material time, or exceptional social disadvantages.

190. There are four principal arguments in favour of a qualified 2:1 entry requirement. First, few BVC graduates with 2:2 degrees or worse will achieve pupillage, and therefore granting entry to what is an expensive and time-consuming course, wastes their time, money and perhaps other opportunities that might be available to them. Secondly, the presence of students who have not reached the standards necessary to reach a 2:1 (or Masters) may well have a negative effect on the learning experience during the BVC for other students. There is considerable anecdotal evidence that this actually occurs. This may well cause particular prejudice to those from less privileged backgrounds, as they could expect to benefit most from the BVC. Thirdly, the Bar is a profession which delivers excellence and not mere competence, and, particularly these days, a 2:2 degree can scarcely be claimed to be perceived as a mark of excellence. Fourthly, imposing a minimum entry requirement of a 2:1, even if it was qualified, would significantly reduce the number of BVC graduates, which in turn would reduce the risk of those who undertake the BVC not getting pupillage. Those who are deterred from embarking on the BVC because of this risk are presumably somewhat more likely to be from less advantaged backgrounds.
191. The arguments against a 2:1 entry requirement, even if it is qualified, are as follows. First, so long as students are properly warned about their (limited) prospects of succeeding in obtaining pupillage with a 2:2 or worse, they should be free to make their own career decisions. Secondly, the BVC qualification may bring skills and status which facilitates access to other attractive careers. Thirdly, the award of a 2:1, or for that matter a 2:2, does not reflect a consistent standard across universities, so that a person with a 2:2 from one university will not necessarily be less competent than one with a 2:1 from another. Fourthly, not least for the same reason, it cannot be said, in all cases if at all, that a person with a 2:2 will be unable to develop a successful, or even better, practice at the Bar than someone with a better degree. There is currently no satisfactory evidence which indicates that failure to get a 2:1 prevents someone from becoming a competent, or even an excellent, barrister.
192. There is plainly a very powerful case for imposing a universal qualified 2:1 entry requirement, provided that is flexibly applied. However, the trouble with the various arguments, whether in favour or against the proposal, is that, at any rate at present, there is an inadequate evidential base for us to determine whether any of them has force, and if so to what extent. Because there are strongly competing factors, and because they point in opposite ways in relation to the issues of widening access to the Bar and improving education for barristers, it is difficult to express a firm conclusion on the issue.
193. Further, some people believe that a person from a disadvantaged background may be more likely to obtain a 2:2 than an equally (or even less) able person from a more privileged background. To that extent, a low barrier for entry to the BVC may give a less privileged person an extra year to improve his or her performance. Again, there is no evidence either way on this point. There is also some evidence (though adequate research has not yet been undertaken) that some disadvantaged

groups, in particular some ethnic minority groups, may be more likely to have a 2:2 for reasons of historic educational disadvantage, rather than for lack of ability.¹⁸ For these reasons, it may be said that imposing a 2:1 requirement, even if it were qualified, could prejudice the very group of people this Working Party was set up to encourage, namely those from less privileged or ethnic minority backgrounds. Further, while for those from more privileged backgrounds with a 2:2, obtaining a Masters degree to satisfy a qualified 2:1 entry requirement could be a realistic option, to many from less privileged backgrounds the costs associated with undertaking another expensive course may be prohibitive.

194. While there are undoubtedly compelling arguments in favour of a qualified 2:1 entry requirement, we consider that the overall position is not yet sufficiently clear to justify recommending the adoption of such a requirement. It may well be impracticable to obtain statistical evidence which unequivocally establishes the extent of any detriment or benefit attributable to the imposition of a qualified 2:1 entry requirement. However, such an investigation should be attempted, as it will provide further information, even if it does not provide a conclusive answer to all the issues to which we have referred. It would not be right to introduce an enhanced academic requirement for entry to the BVC without first seeking to identify its consequences. Professor Chalkley advises that it should be possible to collect and collate evidence, which could then be analysed so as to give a better indication as to the effect of a qualified 2:1 requirement than is currently available.
195. We hope that the Wood Committee will look into this aspect, and in particular, that it will be able to commission the collection, collation and analysis of data, as mentioned in the previous paragraph. Armed with such an analysis, it may well be able to decide whether to recommend the imposition of a qualified 2:1 entry requirement (subject to, but not necessarily instead of, the possibility of an entrance exam, as discussed in paragraphs 182 to 184 above).
196. If no qualified 2:1 entrance requirement is imposed, or (if it is to be imposed) until it is imposed, we would strongly recommend that each BVC provider be required to inform any applicant, who does not have a 2:1 or a postgraduate degree, how many and what proportion of its BVC graduates in the past four years, who had not been awarded a 2:1, obtained a pupillage in employment or Chambers, and went on to

¹⁸ By way of illustration, *the Equalities Review* (2007) (http://www.theequalitiesreview.org.uk/upload/assets/www.theequalitiesreview.org.uk/equality_review.pdf) (p. 61) reported on the students in 2004/05 and their attainment of first class and third class degrees (unhelpfully they do not give the breakdown for 2:1 and 2:2); 13% of all the white students obtained a first with only 6% obtaining a third. The picture is almost completely reversed for Black African/Caribbean students – 18% of Black African students obtained a third class degree with 4% obtaining a first class degree and 14% of Black Caribbean students obtained a third class degree and 3% obtained a first. The pool of students from disadvantaged backgrounds in universities is, in any event, relatively small (“people from deprived backgrounds miss out on ...opportunities [to gain a university degree] because they are persistently less likely to enter higher education”, *Equalities Review* (2007)(p. 60)). There is, of course, a relationship between poverty and educational achievement and a relationship between poverty and ethnicity.

practise. This information should ideally be given both in writing, and orally at a face to face interview.

A Scheme to Finance the Bar Vocational Course

The Financial Problem

197. In paragraph 24(d) of the Interim Report, we provisionally recommended that:

“A scheme be set up to offer loans on preferential terms, alongside the Inns’ scholarships and award schemes, to facilitate studying for, and entry to, the Bar.”

We understand that it is currently envisaged that (subject to finalising the continuing discussions with banks) such a scheme will go live for students undertaking the BVC in the academic year 2008-2009. For most potential BVC students, the costs of embarking on the course are a serious barrier to entry, coming as they now do in many cases, especially if they are from less financially privileged backgrounds, out of university with debts of around £30,000. The costs of the BVC year can, especially in London, easily amount to a further £25,000, once one takes into account the cost of housing, living and travelling.

198. In the past, when local authority grants were available for the BVC, students came into their (unfunded) pupillage with little or no personal debt. The situation is now very different. The debt is front-loaded, which, as we have mentioned, means that many of the less privileged potential entrants are deterred before they even start to embark on training for a career at the Bar. It is partly for this important reason that the Working Party regards funding of the BVC stage as particularly important.

199. The Inns now provide nearly £4 million per annum by way of scholarships. The precise sums are set out in Appendix 11 to this report. This funding represents a very useful and substantial contribution, which we applaud. The Inns take very considerable trouble to identify promising and deserving applicants. Additionally, most of them seek to take into account the needs of applicants. Although this is a difficult exercise, which is inevitably not always perfect in its results and often requires considerable sensitivity, we support the aim of targeting money where it is really needed. However, without wishing to denigrate the very significant contributions from the Inns, they do not represent a very large proportion of the amount that would be required to fund all those doing the BVC. Even if BVC numbers were savagely cut (as some suggest) the amounts the Inns have available, although substantial, would still not be enough.

200. The Inns have developed sophisticated methods to select the most meritorious candidates, and most have told us that nearly all those who receive awards also secure pupillage. That is impressive, and it is right to encourage financially those most likely to succeed. Since, however, there are now so few pupillages, selection for tenancy and practice at the Bar can, for practical purposes, be equated, at least to a substantial extent, with selection for pupillage. This means that anyone failing to obtain an Inn award and a pupillage is at risk of being effectively ruled out of a career at the Bar. There is an argument for saying that less privileged students tend

to be less advanced in the development of their academic and personal skills at the end of their first degree course. Therefore, even if Inns' scholarships take both merit and need into account, the less privileged may be handicapped in competition for Inns' scholarships and pupillages that are selected at that stage.

201. Further, and equally importantly, the experience of some members of the Working Party is that a number of students from less privileged backgrounds do not even apply for an Inn scholarship, because of their perception that they would not be awarded a scholarship despite the fact that, in many such cases, they have the necessary academic attainments.
202. For these reasons, the Working Party thinks that the availability of some sort of acceptable funding for all promising BVC students is highly desirable, so as to ensure that those from less privileged backgrounds, who have the requisite ability, and are determined to succeed at the Bar, can have the opportunity to develop their skills after university.
203. The Working Party realises that the prospect of further debt is likely to be least attractive to students from poor backgrounds where there is less familiarity with debt, and less ability to take on liability for repayment. It is, nonetheless, better to make loans readily available than to make funding the BVC year a further difficult hurdle for the less privileged student to overcome.
204. The Young Barristers' Committee and some few other respondents to our consultation process opposed the proposition that low or no interest loans for the BVC would be a solution to the problems that exist. As we have already mentioned, we accept that a loan scheme would not, in itself, be anything like a complete solution to the barriers to access to the profession for less privileged potential entrants. However, we do believe that it is important for such loans to be available for all BVC students, so that impecuniousness is not an impassable barrier. We understand and accept that entrants from poorer economic backgrounds will regard the need to take a further loan, however competitive and favourable its terms, as a far greater barrier than their more well-resourced peers.

The Terms of the Proposed Lending Scheme

205. The proposed loan scheme that we are supporting would work broadly as follows:
 - (a) Subject to any statutory duty or restriction and to the general law:
 - (i) The Inns of Court would publicise to all their members the existence of loan schemes offered by participating banks to students in such manner and with such frequency as the Inns think fit.
 - (ii) The Inns' publicity would not differentiate between participating banks or include any recommendation or endorsement of any one or more of those banks.
 - (b) The Bar Council would take such steps as it shall think fit to support the Inns' publicity.

- (c) A loan scheme the subject of the Inns' publicity would have the following characteristics:
- (i) Interest charges would be rolled up for 3 years from commencement;
 - (ii) Interest only payments would begin after 3 years from commencement;
 - (iii) Capital and interest payments would begin 5 years after commencement and would continue over a period of 5 years;
 - (iv) Interest on lending would not exceed a rate 1% over Bank of England Base Rate, and would be equal for all students who obtain loans;
 - (v) No initial or service fee would be charged to a student;
 - (vi) The student could be required to maintain a current account with the lender during the currency of the lending;
 - (vii) In exceptional cases the lender could require security for lending or decline to lend by reason of a student's poor credit record;
 - (viii) A lender could at its discretion promote additional or 'top-up' loans for further professional development either to students generally or to students with loans from it;
 - (ix) Other terms of the lending would not be more onerous to the student than the lender's normal terms for a term loan of the duration of the period for capital and interest payments of that student's loan.
- (d) Neither an Inn of Court nor the Bar Council would, by subscribing to these terms:
- (i) Undertake any obligation or liability whatsoever to the participating banks or to any student or member of an Inn in connection with offers of lending or lending by participating banks.
 - (ii) Make any representation to the participating banks or to any student or member of an Inn or any other person concerning the possibility of or offers of lending or lending by participating banks.

What happens to those who take a Loan, but fail to obtain Pupillage?

206. Some respondents have questioned the utility of a loan scheme that may potentially create more barristers who do not obtain a pupillage, and end up with significant debts and no means to repay them. We do not believe that this would be anything like as great a problem as it may initially appear. In this connection, we said in paragraph 28 of the Interim Report that students who pass the BVC, but do not obtain pupillage, almost always appear to find good jobs elsewhere, so as to be able to repay debts incurred in connection with the BVC.

207. A number of respondents to our consultation process suggested that there was no basis for this assertion. In fact, the assertion was based on a series of authoritative comments by bankers with whom the Bar Council has been liaising in relation to the proposed BVC loan funding scheme. The thrust of these comments was that, with almost no material exceptions, those to whom the banks have in the past made loans for the purposes of funding the BVC, but who did not obtain pupillage, have been able to repay those loans regularly, mostly from their earnings in other well paid employment. The banks concerned have since confirmed that they experience very few bad debt problems from BVC graduates, whether or not they obtain pupillage and tenancy. Accordingly, we stand by our view that, at least on the basis of the information currently available to us, the experience so far, at any rate on the basis of current numbers, the great majority of BVC graduates who do not obtain pupillages appear to find good jobs elsewhere.

CHAPTER 6

PUPILLAGE

Introduction

208. Each year there are currently fewer than 500 pupillages, which are sought by a field of around 2,500 (as the applicants include many BVC graduates from earlier years who have not given up hope of finding a pupillage). This ratio of around 5 to 1 is unlikely to improve very greatly (at least in the absence of some revolutionary shift in policy or practice), even if our recommendations in the preceding chapter are adopted. Indeed, if work at the self-employed Bar reduces, as some expect, this ratio may deteriorate, or at least much of any improvement resulting from the implementation of our recommendations may be offset. This means that, in effect, selection for pupillage is likely to remain the major moment of selection, or pinch point, for access to the profession.
209. The number of pupillages has been significantly reduced following the requirement that all pupillages have a minimum funding by Chambers of £10,000 per annum. Although we acknowledge that there is a significant body of opinion to the contrary, the Working Party believes that the funding requirement was and is appropriate, indeed necessary. If unfunded pupillages were generally available, those from privileged backgrounds would be much more likely than others to be able to undertake them. This would skew the pool from which barristers are eventually chosen for practice, and would send out to those considering a career at the Bar a message which is directly contrary to the main purpose of this Working Party. We believe that, both in terms of reality and in terms of the message it sends to the public and to prospective barristers, pupils should be selected on merit alone, and should have funded pupillages so as to create a playing field that is level at least up to the commencement of pupillage. It should be emphasised, however, that this is not inconsistent with our view that the BSB should grant waivers in appropriate circumstances.
210. We also acknowledge that there is an argument for not seeking to increase the number of pupillages currently available. There is no suggestion that there is a shortage of pupillages relative to the availability of new tenancies in Chambers, or relative to the needs of prospective employers. On the contrary: even now, a significant number of pupils do not achieve a tenancy or a job at the employed Bar. It is unlikely that an increase in the number of pupillages would significantly increase the number of tenancies. Accordingly, it can be said that an increase in the number of pupillages would merely serve to add an extra year of expense and time for a further number of BVC graduates who fail to achieve a career at the Bar.
211. Having said that, we are firmly of the view that it would be beneficial if Chambers and employers were able to offer more pupillages. The discussions that we have had satisfy us that the great majority of BVC graduates who do not currently succeed in obtaining pupillage would be very keen to have succeeded even with the knowledge that their prospects of finding a tenancy at the end would be poor. They

are very disappointed by their inability to prove their worth in pupillage. There is obvious force in their concerns. Performance in pupillage may well be a better guide to ability as a barrister than performance at school, university or the BVC. It seems wrong that so many people are denied the opportunity of gaining a pupillage.

212. Furthermore, some people believe that students from less privileged backgrounds are more likely than others to have adequately developed their skills so as to compete on a level playing field by the time they enter pupillage. While there is no statistical evidence on the point, it is clear that pupillage will be the first time some students have the opportunity to operate consistently in a professional environment. Those from privileged backgrounds are likely to have had greater exposure to professional people over a longer period within their families and social circles, and in advance of pupillage. This means that, if the final selection process takes place, in effect, at the end of a student's university career or the beginning of the BVC (at which time pupillage interviews are generally held), many of those who come from less privileged backgrounds could well be disadvantaged.
213. Quite apart from this, it is not as if pupillage will always be a waste of time for those who do not manage to obtain a tenancy in Chambers or a post as an employed barrister. While we have not been supplied with any evidence either way on the point, an opportunity to work closely alongside one or more experienced barristers for a year may represent very valuable experience for a person seeking employment outside the Bar, at least in some cases.
214. We therefore believe that anything that can reasonably be done to increase the number of pupillages should be considered. This chapter accordingly addresses measures aimed at increasing the number of available pupillages. The following issues are addressed in turn:
 - (a) The question of whether pupillages should be made available for all those who pass the BVC.
 - (b) The provision of a clearing house for pupillages so that available pupillage places are not left unfilled.
 - (c) The question whether pupillage should be undertaken with a view to a tenancy or with a view to employment.
 - (d) The issue of part-time pupillages.
 - (e) The setting up of a funded pupillage pool.

Recommendations as to Pupillage

215. **Recommendation 31: The Bar Council should devise and implement a clearing house system for pupillages to ensure that funded pupillage vacancies do not remain unfilled.**

216. **Recommendation 32:** The Bar Council and the Bar Standards Board should work towards ensuring that more employed and other pupillages are made available.
217. **Recommendation 33:** Subject to appropriate monitoring and supervision, pupils should be permitted to seek to undertake their pupillages part-time, where it is feasible and the pupil's circumstances make it desirable.
218. **Recommendation 34:** Waivers for part-time pupillages should still be obtained from the Bar Standards Board before they can actually be undertaken, but the procedure should be better advertised. The Bar Standards Board should be flexible and understanding in its approach to applications for waivers. The Bar Council should undertake research and consultation in order to draw up more detailed guidance on part-time pupillages.
219. **Recommendation 35:** Training in part-time pupillages should be included as part of the programme for pupil supervisors.
220. **Recommendation 36:** Pupils should be allowed to work during their pupillage, subject to the agreement of their pupil supervisors and provided that the work does not interfere with the training value of the pupillage.
221. **Recommendation 37:** A funding pool should be established so as to provide additional funded pupillages sponsored by employers or Government agencies unable to train pupils themselves, but keen to ensure a good supply of barristers with particular skills.
222. **Recommendation 38:** Active measures should be taken to encourage, and enable, employers to become approved Pupil Training Organisations (PTOs) and to offer employed pupillages.
223. **Recommendation 39:** The Bar Council should encourage Chambers to adopt a mentoring policy specially tailored for pupils.

Should Pupillages be Available for all who pass the BVC?

224. Some people believe that the profession has a moral obligation to provide pupillages to all those who pass the BVC, because otherwise students will have wasted their time and money in undertaking the course. Plainly, providing pupillages for all who qualify would involve either substantially limiting the number of people entering the BVC or substantially increasing the number of pupillages, or a combination of both. We have already explained in the previous chapter why we would reject any prescriptive or substantial reduction in BVC numbers.

225. This number of available pupillages is connected with the question of funding for pupillage. Some people believe that the recommendations of the Mountfield Report would have solved the problem of the lack of pupillages. This would have involved a training levy being raised on practising barristers, with the funds raised being used to finance pupillages for those passing the BVC.¹⁹
226. The majority of the members of the Working Party do not believe that it would be appropriate to proceed down this route. In the first place, if all those passing the BVC were offered pupillages, the reduction in entrant numbers, which presently takes place at the pupillage stage, would instead take place at the BVC stage. This would make access even more difficult for those from less privileged backgrounds: (i) simply because there would be limited numbers of BVC places; and (ii) because they would be arguably less able to compete successfully with those from privileged backgrounds at that early stage in their training.
227. Quite apart from this, the majority of the members of the Working Party do not believe there is a moral or other obligation on the Bar to provide pupillages for all who pass the BVC. The BVC is designed to train students for a career at the Bar. It should not, as we have already stated, be made harder (at entrance or exit) merely in order to reduce numbers. The training level should be enhanced for the purpose of ensuring high quality properly trained entrants to the profession. Any other approach would be at least arguably discriminatory. Thus, if the aim is to broaden access to the profession, one should err on the side of permitting all sufficiently qualified and able students to undertake the BVC. As already explained in the preceding chapter, BVC numbers should be limited without actually imposing a numerical limit which could be regarded as anti-competitive.
228. Furthermore, the training levy recommended by the Mountfield Report proved extremely unpopular with the profession, and would, we believe, be impossible in practice to implement. Thus, although a training levy could provide a solution to the problem of funding additional pupillages which many, including a minority of members of the Working Party, would support, we do not consider that it would be achievable in practice. In that connection, the profession's rejection of the proposal was not only on the ground of self-interest, but also because it was not regarded as commercially sensible for the Bar to be compelled to fund pupillages without any relationship to the foreseeable number of tenancies available. It is also fair to say that no other profession, as far as we are aware, imposes such a training levy on its members. While many solicitors firms fund a large number of students through law school, they then take them on as trainees for the benefit of the firm.

¹⁹ It appears that section 46 of the Access to Justice Act 1999 enables the Bar Council to raise a levy for that purpose.

A Clearing House for Pupillages

229. The Working Party has devised the outline of a proposed “clearing house” system, which would be an extension of the current OLPAS system by which pupillages are currently filled. Specifically, the clearing house proposal aims to ensure that all available pupillages are filled. This would ensure that all possible places are filled, and that this happens, as soon and as fairly as possible, which is particularly desirable given the very limited number of pupillages currently on offer.
230. Under the present system of pupillage selection it is possible for a vacancy to remain unfilled because all the candidates deemed suitable by a particular set of Chambers or employers (in this section “providers”) have accepted a competing offer. Equally, providers may find that they have room, resources or the need for additional pupils after the timetable for a particular year has started. At the moment there is no easy way for candidates to identify providers which have such vacancies or for providers to identify available candidates.
231. While no figures are available, it is likely that the number of vacancies available at the end of the normal pupillage selection process will be relatively small, while the number of candidates who have failed to obtain a place will be large. Providers with vacancies will be tempted to leave the vacancies unfilled if they fear that they will be landed with a substantial administrative burden as a result of any such vacancy being advertised. Similarly, providers, who consider on reflection that they might be able to take on additional pupils, will be deterred from doing so by the same considerations.
232. It is clearly undesirable that any potential pupillage vacancies are left unfilled. The Working Party considers that the Bar should do what it can to minimise the risk of vacancies being unfilled, and accordingly to ensure that access to such vacancies is facilitated.
233. So long as there are vacancies unfilled by the initial selection process, we suggest that OLPAS should include a clearing house service, which would operate for a specified period after the conclusion of the common timetable. If, as is recommended by the OLPAS working party, there is to be a compulsory common timetable for pupillage selection, the period for the operation of the clearing house would have to be limited to prevent it being used to circumvent the requirements of the common timetable. In order to minimise the deterrent effect caused by the likely large numbers of candidates seeking a relatively small number of vacancies, the clearing process would need to be driven by providers reviewing the pool of candidates as opposed to candidates applying to providers. To encourage or allow the candidates to apply direct to all providers would risk overwhelming providers’ administrations and discouraging them from participating in the proposed scheme.
234. The scheme we envisage would work along the following lines:
- (a) Candidates already in OLPAS, who had not been accepted for a pupillage by the close of the current offer period, would be invited to indicate electronically whether they wished to be placed in the clearing house pool;

- (b) Such candidates would be entitled to revise their expressed preferences for areas of practice. They would also be able to nominate up to, say, 12 providers by whom they would like to be considered;
- (c) Candidates who had not participated in OLPAS that year would be able to register for the pool by completing the OLPAS registration form;
- (d) No candidate who had already received and accepted an offer of pupillage should be entitled to participate in the clearing house, and all candidates registering for the clearing house should be required to make a declaration that they had not accepted such a pupillage;
- (e) In addition to providers already in OLPAS, non-OLPAS members would be able to participate in the clearing house by electronic registration and payment of an appropriate fee;
- (f) Providers who were already members of OLPAS would be able register electronically for the clearing house as a benefit of their membership without additional charge;
- (g) All participating providers would be required to record the number of vacancies available for clearing house candidates and the terms of the pupillage (start date, length, size of award etc). Providers would be obliged to identify vacancies not previously available during the normal selection season. This fact would be indicated on the list referred to below. No other form of advertising of such a new vacancy would be required;
- (h) The OLPAS site would contain a list of all providers participating in the clearing house which would be accessible to all candidates, and the data in relation to all participating candidates would be accessible to all participating providers;
- (i) Providers could then search the pool for candidates they wished to approach, in accordance with their individual criteria, which would have to comply with Bar Council and statutory requirements with regard to discrimination. Care would need to be taken to ensure that the search facility on the site did not involve unlawful discrimination. However, subject to specialist advice, some sort of filtering by reference to expressed interest in work areas or providers, and, possibly, by reference to academic achievement, might possibly be made available. Providers would not be limited to searching among candidates who had expressed an interest in them;
- (j) Having identified candidates of interest, providers could then implement whatever lawful selection procedures they saw fit, such as interviews or other forms of assessment;
- (k) Unlike the common timetable, there would be no offer period as such: providers would be free to make offers to candidates at any time during the clearing house period, and would be entitled to expect a rapid response from candidates. However it might be reasonable to require providers making

offers to allow a minimum period of 24 hours from the receipt of the offer for it to be accepted;

- (l) The clearing house should be open for a defined period. This would be in the interests of candidates who would require certainty while planning the year ahead, and for providers who would need to plan their training programmes, and be free of the burdens of selection. If the common timetable is to be made compulsory, a defined period would also be required to prevent the requirements of that timetable being circumvented. It is suggested that the clearing house could remain open for one month starting two weeks after the close of the common timetable in any one year. The two week gap would enable registration of candidates and vacancies to be completed;
 - (m) The working of the scheme should be reviewed annually.
235. The precise mechanics of the system will need to be considered in the light of the IT resources available.

Should Pupillage be with a view to a Tenancy or to Employment?

236. The Interim Report raised the possibility of Chambers and relevant employers being required to provide a prescribed minimum number of pupillages each year. Further discussion and investigation has led us to believe that there are real problems with such a suggestion. Different areas of the Bar, whether considered by reference to fields of practice, Chambers and employers, or geographical locations, have a variety of attitudes to pupillage which differ and which, in some cases, are quite inconsistent. It appears that, at least in some cases, such “cultural differences” have arisen for logical, or at least defensible, reasons which can fairly be said to serve those areas of the Bar that adhere to them. Further, the different systems each have their advantages both for Chambers and for pupils, and there is no quantitative evidence, and not even a substantial or consistent body of anecdotal evidence, as to the relative advantages and disadvantages of the differing systems. Accordingly, it would be unrealistic not to accept the continued existence of these differences, rather than to propose changing them.
237. The principal issue in this connection is whether every pupil should have a vacant place, either as a tenant or as an employed barrister, waiting for him or her after successful completion of pupillage.
238. On the one hand, there are substantial numbers of Chambers (mainly in London), which, as a matter of policy, do not regard pupillage as a guarantee of tenancy. They may regard their offer of pupillage partly as a means of optimising their choice of new tenants and partly as a contribution to the training provision of the profession as a whole, with the expectation that some, most (or even all) pupils, on completion of pupillage, will have to look elsewhere for the opportunity to practise at the Bar. This approach is probably somewhat less prevalent than it was, now that quite a few (particularly specialist civil) Chambers offer large awards for pupils, in

some cases getting on for £50,000 per annum. The approach does, however, have the advantage that it allows pupils a further year in which to improve their skills before they are finally selected for practice. It offers a final chance for slower developers (who may well come from socially or economically disadvantaged backgrounds) to shine, and find their true metier in the real-world context of the Bar, where they may not have been able to do so in academia or vocational training.

239. On the other hand, there is a substantial body of Chambers, (particularly outside London) which regard selection for pupillage as the final hurdle for a candidate to overcome, such a pupillage being offered explicitly “with a view to tenancy”. The presumption is that a pupil will progress straight into tenancy unless, in exceptional circumstances only, valid objections are raised by members of Chambers. One advantage of this can be said to be that pupillage is no longer a “year-long interview” which can divide, rather than unite, fellow pupils in a single set of Chambers competing for one or more tenancy vacancies. Pupillage instead becomes a time when mature working relationships can be built from the start in a rather more constructive way between pupils and their Chambers, and the distraction of the impending dread of a further hunt for tenancy or employed practice removed. However, the disadvantages of this approach are that the overall number of pupillages is reduced, down to the number of anticipated available tenancies, and that those who, for various reasons, might best be able to demonstrate their real worth and talent only once they are inside Chambers, may never get that chance.
240. The Working Party has, at present, only anecdotal evidence on this issue, limited to the opinions of those seeking pupillage. Predictably, opinions are split on this issue. Any proposal which is likely to cut down the number of available pupillages is unattractive; equally, any proposal which would reduce the period of uncertainty for prospective barristers is to be welcomed. In the latter connection, a pupillage of the type discussed in paragraph 238 is more unsettling in Chambers than at the employed Bar. Where pupils are employed, they normally can expect to have access to greater resources, structured training programmes, defined monitoring and mentoring, wider support provision and (perhaps above all) the benefit of being part of a larger organisation. All this contributes towards creating what many would see as a less uncertain environment.
241. The Working Party recognises that the link between pupillage and tenancy must, at least for the time being, remain a decision made by each individual Chambers. It is probably best viewed as an evolving and cultural phenomenon with which it would be wrong to interfere, at least without more evidence.

Enabling Employers and Encouraging Chambers to take more Pupils

242. The continued growth of the employed Bar is inevitable. It seems right that this development should be matched by an equivalent provision of pupillage places. This would go some way towards alleviating the problem already identified namely trying to maximise the number of pupillage places in order to allow as many able

aspiring practitioners as possible to have a chance of achieving the opportunity to practise at the Bar, whether as employed or self-employed barristers.

243. At present, there is a perception among a number of employers that it is more difficult than it should be for them to become accredited as pupil-supervisors and Pupil Training Organisations. It is hard, and probably inappropriate, for the Working Party to go into details or merits of the particular cases which have been mentioned to us. What we can and do say is that the Bar Council and the Bar Standards Board should do all they can to encourage and enable appropriate employers to be able to take pupils. In the light of the demand for pupillages, the difficulties for Chambers, and the growth of the employed Bar, this conclusion seems inescapable.
244. It is, we accept, unlikely that any similar words of general encouragement in relation to the self-employed Bar would have any significant effect. Nonetheless, it is worth pointing out to the self-employed Bar that its medium and long-term interests are scarcely well served by the high number of BVC graduates who fail to find pupillages. For quite a few sets of Chambers, the minimum pupillage award of £10,000 a year is a very small sum, and to take on a couple of extra pupils a year would involve very little extra administration. It would be of enormous benefit to the pupils involved, and of potentially substantial benefit to the Chambers concerned. For other sets of Chambers that take no pupils because of their relatively low level of income, £10,000 a year may be a significant sum, but, without pupils, there is a risk of a set withering away. Furthermore, fairly or unfairly, many of those who fail to get pupillage move into other jobs, which are often quite influential, with a jaundiced view of the Bar.
245. Having made these points, it is right to acknowledge that a number of pupillages both at the employed Bar and at the self-employed Bar have terminated prematurely or not even started, because of policy decisions by the employer or by Chambers collapsing. There is therefore a need for appropriate monitoring of such employers, and indeed of Chambers (who are currently, of course, subject to the direct oversight of the Bar Council anyway). Further, in relation to employed pupillages, employers ought to have in mind the need to offer training in advocacy, a matter on which the Bar Council or the Inns should be prepared to offer assistance.

Part-time Pupillages

246. The Working Party has considered two possibilities. The first is whether pupillages could be undertaken effectively on a part-time, fractional basis, for example over 2.5 - 4 days each week for 18 or 24 months (which might be termed “flexi-weeks”). The second possibility is whether pupillages could be broken up into one month or three month blocks (which might be termed “monthly units”).
247. The current rules give the Qualification Committee a discretion to waive the full-time requirement in exceptional circumstances (see Consolidated Regulations 53.1 and Para 801(b) of the Code of Conduct). The Qualifications Committee normally approves an application where there is a good reason for the application and where,

as appropriate, such an application is (a) supported by the applicant's pupil supervisor, and (b) will not have an adverse impact on the pupillage training experience as a whole.²⁰ In the past year, several applications for waivers have been granted mostly where the pupil worked three or four days a week. Such applications have always been supported by the Chambers.

248. In the broader context, demand for part-time work in many other employment situations is substantially driven by caring responsibilities. This is supported by Government research, and has been considered in recent reports available through what is now the Equality and Human Rights Commission. For instance, about 60% of people with children under five said they would have made different choices if better flexible working options had been available to them.²¹ Nearly a third of parents with a dependent child have had to leave a job, or been unable to take one, because of parenting or caring responsibilities.²² Many ethnic minority women have more significant caring responsibilities looking after adults in the extended family and/or because they are lone parents. Finding affordable childcare and a job with flexible working arrangements is critical for example, for Black Caribbean women (who are more likely to be lone parents) and Bangladeshi and Pakistani women (who are more likely to have larger than average families).²³ With an ageing population, these challenges will become more acute. Caring responsibilities of this type are also more prevalent for mature students.
249. Three particular factors thus cause potential demand for part-time pupillages: (a) caring responsibilities; (b) medical needs or disability requirements; and (c) financial imperative. A person on the minimum pupillage award may wish or need to supplement this income. Further, students are increasingly coming to the Bar with significant debts, and those from economically and socially disadvantaged backgrounds can be particularly reluctant to take out loans. Clearly these sorts of factors can overlap and reinforce each other. Thus, a single mother is likely to find survival on the minimum pupillage award in London extremely challenging.
250. Pupillage has developed and works well as a full-time training post, as it demands high levels of commitment. The first six months is an intensive time as pupils make the rapid transition from academic and vocational (BVC) work to the challenges of practice. Many cases last several days or longer, and pupils should see all aspects of preparation for, and the running and conclusion of, a trial. They should observe their pupil supervisor when receiving last-minute instructions, dealing with early

²⁰ Panel C Guidelines, May 2007.

²¹ Holmes et al., (2007) *Work in the future: individuals and workplace transformation 2007*, cited in *Enter the TimeLords: Transforming work to meet the future*. Final report of the EOC's investigation into the Transformation of Work, ECO, June 2007.

²² Equal Opportunities Commission (EOC) (2007) Unpublished ICM omnibus data. 24th – 28th January cited in *Enter the TimeLords: Transforming work to meet the future*. Final report of the EOC's investigation into the Transformation of Work, ECO, June 2007.

²³ *Moving on up? The way Forward*. Report of the EOC's investigation into Bangladeshi, Pakistani and Black Caribbean women and work, EOC, March 2007.

starts and late nights, as well as his or her relationships with clients and clerks. Some features of a practice, such as mediations or negotiations or urgent research, may well last into unsocial hours. Such experiences rarely take place in neatly time-tabled slots.

251. In the second six months, pupils can be instructed in their own cases. These will often involve similar pressures, and hearings will sometimes over-run. If pupils had demands from another employer or inflexible caring arrangements this could be difficult, for both personal development and client care. It seems that flexibility would be required on the part of other employers and any caring responsibilities.
252. Flexible working for pupils would present new demands for pupil supervisors. In any case where a reduced weekly or monthly time-table is agreed, the pupillage period lengthens pro rata. A pupil on a part-time training route could be at a disadvantage in assessment procedures with other pupils. However, in some circumstances there may also be advantages to pupil supervisors. A pupil may be able to bring from his or her other work transferable skills or knowledge to pupillage, or it may suit a supervisor to have a part-time pupil. For example, we know of one Chambers who are keen to offer a part-time pupillage because of the university teaching commitments of the relevant pupil supervisor.
253. Many organisations now offer “flexible working” as a “job-share” arrangement, where suitably qualified applicants are able to share a particular job. Leaving aside the difficulty of a pupil supervisor supervising two pupils (which is not permissible unless permission to do so is obtained), it is likely that conflicts between job-sharing pupils would frequently occur, for instance in relation to an interesting case or conference. It is also difficult to envisage how such a system could work effectively and efficiently or in a client’s best interests during a case, particularly in the second six months of pupillage. We have therefore concluded that a “job share” arrangement is not a suitable form of flexi-working for pupillage.
254. Thus, while job-sharing is not a realistic option, the Working Party is of the view that there are no valid objections in principle to other forms of more flexible pupillages, although any proposal in that connection must be considered on a case-by-case basis. We consider that pupillage is best undertaken as a full-time training job, but in exceptional cases, such as those detailed above, waivers can be granted, and have been rightly granted, by the BSB’s Qualifications Committee.
255. Application should normally be made in the first instance for pupillage alongside other applicants. Once accepted, the potential pupil can apply to perform his or her pupillage on a part-time basis. Chambers should be encouraged to respond favourably and sensitively to reasonable requests for part-time arrangements to be made. Waiver applications should then be supported by Chambers and considered by the BSB on their merits.
256. There is no need to be prescriptive as to whether part-time pupillages are taken as an extended gap between monthly units of one, three or six months, or as a flexi-week. In many, if not all, practice areas, it may not be possible for a flexi-week approach to be adopted, but in some practice areas it may be suitable, or a mixture of the two may be possible.

257. Pupillages should be monitored by the BSB to ensure that a pupil is meeting the necessary training requirements. We further consider that ensuring a level playing field between part-time and full-time pupils can be met through adequate monitoring of pupillages and through training for pupil supervisors and tenancy selection committees.
258. For these reasons, we believe that, subject to appropriate monitoring and supervision, Chambers and employers should be encouraged to permit pupillages to be served part-time. We have some concerns about encouraging part-time pupil supervisors, save in exceptional circumstances. However, we also recognise that a part-time pupil supervisor and a part-time pupil whose circumstances required a part-time pupillage might be a good combination.
259. The procedure for applying for a waiver from the BSB should be better advertised. The BSB should continue to be flexible and understanding in its approach to applications, particularly when supported by the relevant Chambers or employer.
260. Research and consultation should be carried out in this area in order to draw up detailed guidance. This guidance should include examples of the circumstances in which the BSB would in general find part-time pupillages to be acceptable. This would enable applicants to reach a more informed view as to the likely success of their application. Applications to the BSB should generally be made jointly by the Chambers/employer and the relevant pupil. We do not suggest that Chambers should be under any duty to allow pupils to work part-time, nor that prospective pupils should have an entitlement to undertake their pupillage part-time. Rather we would prefer to see a system by which applications to undertake part-time pupillages are made by pupils (with the required support of their Chambers), as exists at present, but in a better advertised and more developed form.
261. We also consider that training in part-time pupillages be included as part of the selection processes and also for individual pupil supervisors.

Earning Money during Pupillage

262. The current rule, in paragraph 801 (b) of the Code of Conduct, requires pupillage to be a full-time commitment, but allows a pupil, with the permission of his or her pupil supervisor or head of Chambers, to take part-time work which does not materially interfere with the pupillage. As we understand it, the normal practice is not to allow pupils to take on part-time employment, except if it is in some way connected with the law – for instance, libel reading for newspapers. This means that many pupils on a basic pupillage award of £10,000 a year, and with no other means of support, either have to borrow yet more money, or have to seek employment at evenings and weekends surreptitiously.
263. There is undoubtedly a strong argument for maintaining the current practice, which makes it very difficult for pupils to take on employed work unconnected with the law. Pupillage is normally a very demanding and time-consuming experience (as explained in paragraphs 250 and 251 above). As a result, taking on some other employment may make the life of a pupil very difficult or even intolerable, and it

may damage her or his performance and experience as a pupil. Nonetheless, it appears clear from conversations that members of the Working Party have had, that there are a number of pupils, particularly from underprivileged backgrounds, who feel they simply could not take up or continue in pupillage, if they were unable to supplement their income by part-time working.

264. The Working Party has come to the conclusion that this issue should not be governed by a rule of universal application, and can only sensibly be dealt with on a case-by-case basis, which should, if possible, be more flexible than the current practice. In particular, it should not be unduly burdensome administratively. The appropriateness and feasibility of a pupil taking on part-time work outside her or his pupillage will depend on the nature of the supervisor's work, the attitude of the supervisor, the needs of the pupil, the stamina of the pupil, and, no doubt, a number of other factors. It should be open to a pupil to work part-time, provided that the issue is first raised with his or her supervisor, who, after considering all the circumstances (including, in particular, the needs of the pupil, the nature and demands of the proposed part-time work, and the demands of the pupillage), should decide whether or not to agree to the pupil's request. Obviously, if the supervisor agrees, but subsequently forms the view that the part-time work is prejudicing the pupillage or the interests of the pupil, then the agreement would have to be revoked.
265. We consider that the question whether a particular pupil should be allowed to take on part-time work is a matter which, as is the present position, ought to be left to the individual pupil and supervisor (and, if thought appropriate, the relevant set of Chambers). First, it is an issue on which those directly involved are peculiarly well-suited to judge, and we doubt very much whether the Bar Council, the BSB or the Inns would be able to be of much assistance in a particular case. Secondly, if a bureaucratic process was involved, there would be an increased risk of pupils deciding to work illicitly, and a temptation for supervisors to deny any request to avoid paperwork. Having said that, we hope that the Bar Council, the BSB or the Inns would issue guidance to pupils and supervisors on this issue.

A Funding Pool for Pupillages

266. As already pointed out, it is highly desirable that the number of available pupillages is increased. The Working Party has considered ways in which this might be achieved. Any increase in the number of pupillages must take account of a number of principles which have already been identified in this Report. Although one of those principles is that a minimum award for pupillage is essential, i.e. that all pupils should be paid, we emphasise that an "unpaid" pupillage does not necessarily mean an *unfunded* pupillage. Funding for pupillages could come from sources independent of the prospective pupil, so long as the funding did not skew fairness amongst those competing for the pupillage. Our investigations indicate that there are external bodies (whether public benefactors, public authorities, or private sector firms) that may well be prepared to fund Chambers to supervise pupillages.

267. We believe that additional pupillages could therefore be created by creating a “pool” of funding from those who, while willing to fund such places, are happy to delegate both the selection of the best candidate for the pupillage, and the supervision of that pupillage, to the Bar.
268. The precise details of such a scheme would have to be developed after a pilot project, but it is possible to identify some applicable principles, as we indicate below.
269. It should be mentioned in this connection that the Bar Council is actively negotiating about the possibility of the Legal Services Commission funding a number of pupillages out of its training fund of about £3 million per annum, which is at present used wholly to fund training contracts for solicitors in publicly funded practices. The pupillages to be funded would be in publicly funded Chambers, which could demonstrate that they had already made a reasonable financial contribution to the provision of pupillages and could not afford to do more without assistance.
270. We expect that such a scheme would work on a Circuit-by-Circuit basis. Those prepared to fund (but not to host) extra pupillages would do so, we imagine, for one (or both) of two reasons. They may be public or benefactor organisations which have a budget available for increasing training opportunities at the Bar. Alternatively, they may be organisations wishing to employ, or specifically instruct, in-house counsel with certain skills that match their particular requirements, but they lack the expertise and infrastructure to train a pupil themselves.
271. Chambers would recruit pupils in the normal way and, in line with the OLPAS recommendations mentioned above in relation to the clearing house scheme, at the same time as other Chambers.
272. Those administering the funding pool for a particular Circuit (including the Bar Council, local Circuit representatives and key employers) would alert all recruiting Chambers in the Circuit as to what pupillages were able to be funded from the pool, and what particular attributes each extra pupillage required. This could be an aptitude for a particular kind of law, or perhaps an interest or actual work experience outside the Bar in a particular industry, or simply a general skill (for example, a language).
273. Chambers would be told that, following their own pupillage interview process, they should not only select their own successful future pupils, but they should also seek to identify suitable candidates to nominate for extra funding pool pupillages. If a Chambers-nominated candidate wins a funding pool pupillage that Chambers would supervise the pupil, and the money to fund the pupillage will come from the funding pool.
274. Chambers who did not run a selection process during that particular season could not put forward candidates for funding pool pupillages. This would encourage Chambers to run their own recruitment processes, and would also ensure that all candidates nominated for funding pool pupillages have already been assessed as fit for pupillage by a set of Chambers running a full recruitment process.

275. Once all nominations are in, the funding pool would hold a brief series of interviews to allocate funding pool pupillages among those nominated by the various Chambers on that Circuit.
276. The advantage to Chambers of “hosting” a funding pool pupillage would be the implication of a flow of new work to one of their pupils without the burden of having to pay for the pupillage. In other words, Chambers would gain a pupil who (effectively) pays for him or herself, and quite possibly brings in additional work along with a useful contact in the shape of his or her funder.
277. The advantage to the funders would be a barrister in practice within six months, trained at a Chambers, possibly in a specialist area of law, and ready to be briefed from her or his second six months onwards.
278. The advantage to the pupil is plain: it would be a pupillage in a practice area of interest, with a better than usual chance of work at the end of the first six months, or the prospect of an employed practice with the sponsor of the pupillage.
279. The advantage to the profession would be having more pupillages, with the pupils being properly and fairly recruited and trained, while using money from outside the profession to fund it.
280. As this is a new idea, it will have to be piloted and fine-tuned. Like any fresh initiative, it may ultimately fail, but initial discussions suggest that it has a real prospect of success. Much work needs to be done to raise interest in the scheme from potential funders, both public and private organisations and agencies and law firms and industry in general (such as banks and insurance companies). If successful the scheme should help to achieve some of the aims of the Working Party, including an increase in the number of pupillages, the fair selection of pupils, and the maintenance of the rule against unpaid pupillages.
281. Such a scheme may well ensure that the principle of pupillage itself is supported, if the only option for funders and for would-be pupils would otherwise be to seek an alternative to the Bar.
282. The scheme may also meet another of the proposals made in the Interim Report, namely that active measures should be taken by the Bar Council and the Bar Standards Board to encourage, and enable, employers to become approved pupil training organisations (PTOs) and to offer employed pupillages. Participation in the scheme as funders may prompt some to become pupil trainers themselves in due course.

The Culture of the Bar

283. There is evidence to suggest that pupils of disadvantaged socio-economic backgrounds and of minority groups leave the Bar during pupillage or at early stages of their practice.

284. The financial difficulties that this group experiences (which has been examined in detail above) is only a part of the problem. The culture at the Bar is not very inclusive, which makes these groups more vulnerable to prejudice and stereotyping. The Working Party believes that making equality and diversity training compulsory for all members of the Bar is an important part of the solution. A “mentoring” system for pupils and junior tenants would also significantly help those who feel alienated and isolated.
285. This topic is considered further in Chapter 8 of this Report.

CHAPTER 7

SELECTION FOR PUPILLAGE AND TENANCY

Introduction

286. In paragraph 25(c) of the Interim Report, we provisionally recommended that:

“The Bar Council should offer further training for all Chambers in fair pupil selection to ensure that the most able students are selected, irrespective of background.”

287. This recommendation arose from the Working Party’s concern that pupillage and tenancy selection procedures may tend to discriminate against applicants from less privileged or minority ethnic backgrounds, as well as those applicants who were older or had a disability. There are some figures which demonstrate that those from higher socio-economic backgrounds are disproportionately successful in gaining pupillages and tenancies, but the figures are out-dated and limited to the Commercial Bar. Accordingly, they cannot be safely relied on. Nonetheless, there is a perception, that, particularly in privately funded (and most highly remunerated) fields, the majority of barristers come from more privileged social backgrounds, and went to private schools and Oxbridge. To an extent, this perception derives some support from anecdotal evidence, but it is fair to say that much of such evidence is historical, and selection procedures have improved over the past decade.

288. In recent years, the Bar Council has introduced a requirement that all pupillages should be advertised. This is a step in the right direction, and prevents Chambers taking those recommended to them through personal contacts without an open competition, but it is far from sufficient by itself and has presented particular difficulties to prospective employers of barristers.

289. There is a particular problem in selecting for pupillage, because many of the best Chambers tend to select early at a time when many of the least advantaged students may well have had little time or experience to learn how to present themselves well to the profession. Candidates from lower socio-economic backgrounds may present less well than those from more privileged backgrounds, particularly at the age at which most entrants are normally selected, namely when they are between 21 and 25 years old. The Bar is a profession in which good presentation is both of great importance and highly valued. Use of language is crucial both in advocacy and in interview.

290. Chambers need to make allowances in this respect, because presentation can often improve rapidly once a candidate starts at the Bar if he or she has the other necessary qualities and appropriate support and guidance. Incisiveness, intellect and the ability to communicate effectively with Judges, colleagues, solicitors and lay clients, are, at least in many cases, skills that are less easily learned.

291. The way in which Chambers pick their recruits is certainly improving, but, at least in many cases, it still has a long way to go. The best Chambers know they can only

stay on top by choosing the very best; and they know that the very best may come from any social background, so it is in their own interests to look for candidates from across all backgrounds. Chambers that are not the very best may often wish to move into that category, so they have the same interests.

Recommendations as to Selection Procedures

292. **Recommendation 40: All barristers involved in selecting assessed mini-pupils, pupils and tenants should be required to be trained in non-discriminatory selection procedures.**
293. **Recommendation 41: Merit-based selection procedures involving written or oral work should be actively encouraged in place of interview-based selection procedures.**
294. **Recommendation 42: The Bar Council should encourage good practices in pupillage and tenancy and employment selection.**
295. **Recommendation 43: The recent recommendations of the OLPAS Rules Working Party should be put into effect. In particular, there should be a common and compulsory timetable for pupillage applications.**

Discrimination in Recruitment Procedures

296. Paragraphs 305 and 403.2 of the Bar's Code of Conduct provide as follows:

305.1. A barrister must not in relation to any other person (including a client or another barrister or a pupil or a student member of an Inn of Court) discriminate directly or indirectly or victimise because of race, colour, ethnic or national origin, nationality, citizenship, sex, sexual orientation, marital status, disability, religion or political persuasion.

305.2. A barrister must not in relation to any offer of a pupillage or tenancy discriminate directly or indirectly against a person on grounds of age, save where such discrimination can be shown to be objectively and reasonably justifiable.

403.2 A self-employed barrister:

- (c) *must have regard to any relevant guidance issued by the Bar Council including guidance as to:*
 - (a) *the administration of Chambers;*
 - (b) *pupillage and further training; and*
 - (c) *good equal opportunities practice in Chambers in the form of the Equality and Diversity Code for the Bar.*

297. The Equality and Diversity Code is directed at assisting barristers to apply good equal opportunities practice in the development and running of Chambers.
298. Experience demonstrates that fair and modern recruitment procedures assist in ensuring that the best candidates are recruited. Such procedures ensure that a rational basis is identified for both:
- (a) Determining the skills required for a particular vacancy; and
 - (b) Determining who best demonstrates those skills.
299. Informal and unstructured recruitment processes carry the risks that:
- (a) Decisions will be based on ill thought out considerations, so that the best person may not succeed;
 - (b) Improper considerations may be introduced into the selection process; and
 - (c) Chambers will be exposed to liability for unlawful discrimination.
300. Recruitment by word of mouth, or on the recommendation of those known to the current members of a set of Chambers, is likely to result in a pool of candidates whose personal characteristics replicate those of those members. This is because we tend to know people – in broad terms – like ourselves. It has the effect of excluding well (and perhaps better) qualified candidates irrationally, unfairly, and in a way which may unlawfully discriminate.²⁴
301. Further, unstructured recruitment decisions are more likely to result in subjective (and, therefore, potentially unfair and improper) judgments. Every interviewer has subconscious biases, perceptions and prejudices which inform her or his thinking. These are inevitably influenced by experience and social backgrounds. Where these biases, perceptions and prejudices relate to personal characteristics such as gender, race, disability status, sexual orientation, religion or age – whether or not

²⁴ As Mummery LJ put it at paragraphs 53-7 in Coker & Osamor v. The Lord Chancellor and the Lord Chancellor's Department [2002] IRLR 80:- “[T]he practice of making appointments from a circle of family, friends and acquaintances will often be open to objection for a number of reasons. It may not produce the best candidate for the post. It may be likely to result in the appointee being of a particular gender or racial group. It may infringe the principle of equal opportunities.The Code of Practice issued by the Equal Opportunities Commission in 1985 under s.56A(1) of the 1975 Act ... contains valuable practical guidance for the elimination of discrimination in the field of employment and for the promotion of equality of opportunity between men and women, has this to say about that practice: ‘... recruitment solely or primarily by word of mouth may unnecessarily restrict the choice of applicants available. The method should be avoided in a workforce predominantly of one sex, if in practice it precludes members of the opposite sex from applying.’ It is possible that a recruitment exercise conducted by word of mouth, by personal recommendation or by other informal recruitment method will constitute indirect discrimination”.

unconscious, benign, or based on stereotypes - they are likely to result in unlawful decision making or at least lead to an inference of the same.²⁵

302. Subjective decision-making carries with it a high risk of excluding the best candidates. Adopting fair procedures matters because it is “*fair, commercially advantageous, necessary for compliance with non-discrimination law and constitutionally important*” (Introduction, Equality and Diversity Code).
303. It is sometimes suggested that equality undermines merit, but this suggestion is wrong. It either assumes that equality involves accommodating too broad a range of people (that is, those who are not properly qualified) or it is based on discriminatory assumptions about those groups who are traditionally under-represented. A rigorous equal opportunities compliant recruitment process will in fact support and promote recruitment on merit and therefore fairness and excellence at the Bar.²⁶
304. The statutory Codes of Practice published by the Equality Commissions (the Commission for Racial Equality, the Equal Opportunities Commission, and the Disability Rights Commission) give guidance on recruitment and selection. This guidance must be taken into account by a court or tribunal in any proceedings. It is, therefore, always material to determining a question of unlawful discrimination.²⁷ The guidance in the Bar’s Equality and Diversity Code is intended to reflect the guidance in the statutory Codes.

²⁵ Sedley LJ said the following at paragraphs 7-8 in *Anya v. University of Oxford and another* [2001] ICR 847: “It is important to bear in mind that it is unusual to find direct evidence of racial discrimination. Few employers will be prepared to admit such discrimination even to themselves. In some cases the discrimination will not be ill-intentioned but merely based on an assumption that ‘he or she would not have fitted in’ Though there will be some cases where, for example, the non-selection of the applicant for a post or for promotion is clearly not on racial grounds, a finding of discrimination and a finding of a difference in race will often point to the possibility of racial discrimination. In such circumstances the tribunal will look to the employer for an explanation. If no explanation is then put forward or if the tribunal considers the explanation to be inadequate or unsatisfactory it will be legitimate for the tribunal to infer that the discrimination was on racial grounds. . . . *In the allocation of jobs by any sensibly-run institution, the explanation [for the rejection of a particular candidate] will be straightforward: the candidates were interviewed by an unbiased panel on an equal footing, using common criteria which contained no obvious or latent elements capable of favouring one racial group over another; and the best one was chosen. By parity of reasoning, evidence that one or more members of the panel were not unbiased, or that equal opportunities procedures were not used when they should have been, may point to the possibility of conscious or unconscious racial bias having entered into the process*”. Since these cases, the anti-discrimination legislation has been amended to introduce a more liberal concept of discrimination and a shift in the burden of proof, making the establishment of discrimination easier. This makes the need to follow proper procedures more compelling.

²⁶ It is often useful also to unpick the concept of merit, so as to understand it in the context of valuing diversity. Diversity is essential if all communities are to be properly served and the Bar is to thrive.

²⁷ Section 47(10) Race Relations Act 1976 and in materially the same terms, section 71C(11), Race Relations Act 1976, section 56A(10), Sex Discrimination Act 1975 and section 53A(8A), Disability Discrimination Act 1995.

The Minimum Requirements for a Fair Compliant Selection Procedure

305. The minimum requirements for a fair and equal opportunities compliant selection procedure are set out below.
306. A fair and compliant selection procedure will involve, at least, the following elements:
- (a) The identification, in advance of the recruitment process, of the nature of the vacancy (whether pupillage or tenancy and if the latter, the practice area and level) and the tasks that are required to be performed in that role (a “*role description*”, analogous to a job description);
 - (b) The identification of the skills, knowledge, abilities, qualifications, experience and qualities that are considered necessary or desirable in a candidate, in order to perform all the duties or undertake the training satisfactorily (often described as a “*person specification*”). Marginal and irrelevant attributes should be ignored;
 - (c) The application process should be open, that is through advertisement and/or OLPAS, as appropriate;
 - (d) A statement should be included in any advertisement indicating a willingness to make reasonable adjustments for disabled candidates (which must, of course, be honoured);
 - (e) The criteria against which the applicants are to be assessed must be identified in advance. The relative importance of each of them must also be assessed in advance. The criteria should be formulated to assess the extent to which a candidate demonstrates the skills and knowledge required for the particular vacancy;
 - (f) Application forms (which are always preferable to curricula vitae) should seek only information that is relevant to the skills and knowledge required or that is identified as desirable;
 - (g) Shortlisting and interviewing should be undertaken by more than one person, and the panel should reflect a diverse mix of members of Chambers;
 - (h) All interviewers must have been appropriately trained in equality and diversity selection procedures;
 - (i) Shortlisting and interviewing should be undertaken against the consistent application of the pre-agreed criteria;
 - (j) The questions asked of all candidates should be carefully planned, and should be directed at testing the extent to which a candidate meets the pre-agreed criteria;

- (k) The processes should be properly recorded. The records (including interview notes and score sheets) should be retained for at least a year in case the process is challenged;
 - (l) Chambers should monitor the outcome of the process, by reference to gender, ethnicity, disability status, sexual orientation, religion and belief, and age, to check for any apparent disparate impact. A review of the process should be undertaken if disparate impact is shown.
307. A further additional guide to good practice should include:
- (a) Chambers publishing its willingness to make reasonable adjustments for disabled applicants. The legal obligation requires adjustments to be appropriately made so that disabled candidates are not disadvantaged by any aspect of the recruitment process;
 - (b) Where there is an under-representation of a particular ethnic group in Chambers, it is good practice expressly to encourage applications from those groups in any advertisement. This demonstrates to potential candidates who may be discouraged by an absence of barristers from their group that Chambers is keen to receive applications from them. It will increase the pool from which selection is to take place;
 - (c) The role description and person specification should be checked to ensure that they are capable of being judged objectively, and do not include any requirements which are discriminatory.

Training for Chambers Selection Procedures

308. We started this chapter by referring to the recommendation in our Interim Report that further training should be offered to all Chambers in fair pupil and tenancy selection. It will be noted that our recommendations now suggest that such training should be made compulsory in respect of those selecting pupils or assessed mini-pupils. However, this recommendation does not extend to those selecting informal mini-pupils. Assessed mini-pupils attend Chambers wholly or partly with a view to being assessed as potential pupils. Informal mini-pupils, on the other hand, come to Chambers for a few days to learn about the workings of the Bar and the life of a barrister, as explained in paragraphs 67 to 72 and 115 to 117 above. Although, in an ideal world, compulsory training for those who select informal mini-pupils may be appropriate, it may discourage Chambers from offering such mini-pupillages, which are of no inherent benefit to them. Our reason for recommending that training should be compulsory (save in relation to informal mini-pupils) is as follows.
309. Courses on selection procedures have, in fact, been widely available to barristers for some years (organised through City University and the Bar Council's Equal Opportunities Officers). But the take-up of these courses has been modest, with scarcely more than 100 barristers having opted for the training over the entire period. We cannot calculate how many barristers are involved in selection

processes each year, but we are sure that it must be a large number, considerably in excess of the number of those who have attended the course, bearing in mind the number of Chambers.

310. All but the largest and best resourced Chambers lack the human resources staff that firms of solicitors and other employers would regard as commonplace. They do not, therefore (and through no fault of their own), have easily accessible advice about best practice in selection procedures available to them. This indicates to us that those involved in pupillage and tenancy selection processes ought to have training to ensure that they are equipped to follow the good practices we have set out above.
311. Selection procedures are constantly developing, and we believe that it would be useful for the Bar Council to discuss appropriate procedures with the Law Society and the Judicial Appointments Commission, so that a degree of harmonisation of good practice can be applied across the legal profession. However, we acknowledge that it is very important that the procedures are not so onerous as to deter Chambers from taking on pupils or assessed mini-pupils.

The OLPAS Procedure

312. We have had the benefit of considering the Report of the OLPAS Rules Working Party (“the OLPAS Report”) commissioned by the Training for the Bar Committee of the Bar Council. We will not lengthen this report by repeating the arguments contained in that report, which is annexed as Appendix 10 to this Report.
313. In our view, the conclusions of the OLPAS Report are valid and appropriate. We believe that making the OLPAS timetable common and compulsory will improve access to the profession by ensuring that pupillage applicants compete on a level playing field.

CHAPTER 8

CAREER DEVELOPMENT AND RETENTION

Introduction

314. Progress in widening access to the Bar may be undermined if steps are not taken to ensure that those gaining access to the profession are retained within it. There is little point in improving equality and diversity at the access stage, if disproportionate numbers of practitioners from disadvantaged or other groups are lost to the Bar in their early years of practice. This may deter qualified candidates from these groups, and may in turn adversely affect the pool from which the future judiciary is to be selected.

The Problems

315. Many responses to the Interim Report addressed retention, and drew specific attention to the position of women, black and ethnic minorities, those with disabilities and older entrants to the profession.²⁸
316. The Bar Council now monitors changes in practice status and barristers leaving practice, by reference to gender, ethnicity, and disability. The resulting statistics show that certain groups are especially vulnerable to de facto exclusion in their early years of practice. This is particularly true of women.
317. Whilst the number of women barristers has increased significantly in the last three decades, so that men and women now graduate from the BVC in roughly equal numbers, women are still being lost to the profession in greater numbers during their early years of practice. A Bar Council study of barristers ceasing self-employed practice found that the proportion of women who began a tenancy between the years 1988 and 1998, and who ceased to practise between the sixth and tenth years of call was nearly twice that of men. The fact that there are significantly more women than men in employed practice, also suggests that self-employed practice may present particular obstacles for women. Anecdotal evidence strongly supports this. This means that one cannot assume that the simple fact that there is now a greater number (and proportion) of women entering the profession will necessarily result in a greater number, or at least a corresponding increase in the number, (or proportion) of women practising at senior levels in future decades.
318. The data available to us indicate that level of income and the uncertainty over future income are significant factors in relation to retention, as is a desire to spend more time with family. Women in particular consider that having children produces an

²⁸ E.g. Lawyers for Disability Equality; Disability Sub-Group of the Equality and Diversity Committee; “Bar Concern”.

adverse effect on their careers at the Bar, especially where their practice requires frequent appearances in court.²⁹

319. There is some evidence too that black and ethnic minority practitioners in self-employed practice also leave the profession in disproportionate numbers in the early years of practice.
320. There is, as yet, no valid research on leavers with disabilities. However, responses to the Interim Report suggest that some barristers with disabilities, experience disadvantage and discrimination, making continued practice difficult or impossible. Reasons for this, we believe, include a relatively low level of awareness at the Bar of disability-related issues, as well as of the legal obligations contained in the Disability Discrimination Act 1995.³⁰
321. Barristers entering practice as mature applicants, who are more likely to have families and financial commitments, are also at a relative disadvantage, owing to the financial insecurity inherent in most areas of self-employed practice.

Recommendations as to Retention

322. A focussed and multi-stranded approach is required to remedy the problems we have identified. We set out our recommendations below, followed by our reasoning.
323. **Recommendation 44: Some equality and diversity training should be made compulsory for all barristers as part of their continuing professional development requirements.**
324. **Recommendation 45: Chambers should be encouraged to consider guaranteed income schemes for barristers in their early years of practice.**
325. **Recommendation 46: There should be closer monitoring of the extent to which there is actual compliance with equality and diversity requirements.**
326. **Recommendation 47: The Bar Council should encourage Chambers and relevant employers to adopt a mentoring policy for practice development and particular needs. In particular, specific arrangements should be in place to ensure that (a) women who take maternity leave or career breaks to accommodate caring responsibilities and (b) practitioners with disabilities, should be offered a mentor.**

²⁹ Bar Council Equality and Diversity Committees Exit Survey for Barristers Changing Practice Status Report (2005), prepared for the Bar Council by ERS Market Research. We have included a selection of comments from the last exit survey and from the responses to the Interim Report in Appendix 12.

³⁰ See the comments of the Disability Sub-Group of the Equality and Diversity Committee.

327. **Recommendation 48: Further guidance should be given to Chambers on disability, and the need to make reasonable adjustments for practitioners with disabilities.**
328. **Recommendation 49: The Bar Council should ensure that its own practices and policies do not unjustifiably disadvantage practitioners with disabilities and others, including women on maternity leave and those with caring responsibilities.**

Equality and Diversity Training

329. Anecdotal evidence suggests that women, black and ethnic minority barristers, and those with disabilities, still experience prejudice and stereotyping, about their aspirations and abilities. We should emphasise that this is by no means the universally reported experience. Nor, when such prejudice or stereotyping is said to have occurred, was it always the responsibility of other barristers. Clerks, solicitors, and clients were also identified. This is scarcely surprising: the problem is obviously not unique to the Bar, and, when it occurs, it is often unconscious and unintended.
330. Equality and diversity training can help raise awareness about the issues that affect women, barristers from other disadvantaged groups, and those with a disability. It can also help in tackling stereotyping and prejudice. At the moment such training is not compulsory. The Working Party considers that equality and diversity training should be compulsory for all barristers as part of their continuing professional development requirements. We understand that the Institute of Barristers' Clerks (IBC) currently organises such training for barristers' clerks. We strongly support this, and hope that consideration will be given by the IBC to making such training compulsory.
331. Although it was mentioned in some of the responses to the Interim Report, the training of Judges on these issues is probably beyond our remit. We are, however, pleased to note that the Judicial Studies Board offers widespread diversity training for Judges. We express the hope that such training will be taken up by Judges at all levels. It should include emphasis on the issues that arise for practitioners with disabilities (whether visibly or invisibly), pregnant women, women on maternity leave, and those with caring responsibilities.

Guidance on and Monitoring Compliance with Equality and Diversity Requirements

332. The culture of the Bar is one of long working hours, often coupled with an expectation that barristers will be in Chambers during those long hours. The extent to which this culture is justified is a matter of debate, and may depend on the nature of the type of work and particular case. In addition, the competitive nature of practice, and adversarial litigation itself, can make a barrister's career very stressful and lonely.

333. These characteristics tend to foster an atmosphere which discourages flexible working. In consequence, those with caring responsibilities or with certain disabilities can find themselves particularly disadvantaged.
334. Annex G of the Equality and Diversity Code provides guidance to Chambers on the arrangements that should be made to accommodate women on maternity leave and those wishing to work flexibly. Those guidelines advise Chambers to assist those returning from maternity to build up their practices and enable flexible working (paragraphs 3 and 6). However, some of the responses we received indicated that that guidance was not always followed.³¹ The Bar Council has issued guidance on flexible working and career breaks³² but the extent to which this is being adopted by Chambers is unclear.
335. We consider that there should be closer monitoring by the BSB of the extent to which sets of Chambers comply with appropriate legal and professional equality and diversity requirements. Chambers could be required to report on the steps they have taken in that connection. Where it appears that Chambers have been unsuccessful in retaining practitioners with disabilities or women after taking maternity leave or career breaks, explanations could be sought and guidance offered.
336. As we have indicated, there appears to be a low level of awareness of (a) the retention issues that arise for practitioners with disabilities, (b) the duties under the Disability Discrimination Act 1995, and (c) the concepts of “disability” and “discrimination” adopted by the 1995 Act. Some respondents to the Interim Report drew particular attention to the issues that face people with disabilities.³³ There is little guidance in the Bar’s Equality and Diversity Code on the duties on Chambers to make reasonable adjustments in that connection. “Disability” in the 1995 Act includes visible and invisible physical and mental impairments. It is likely that a significant number of barristers is disabled within this definition.
337. The culture of the profession to which we refer in paragraph 332 may disadvantage barristers with disabilities. As a result, the opportunity to make reasonable adjustments, an obligation imposed on Chambers and clerks, may be missed.³⁴ Progress is likely to be achieved through effective equality and diversity training. We recommend that further guidance be given to Chambers on “disability” and the need to make “reasonable adjustments” for practitioners with disabilities, through a more detailed Annex to the Equality and Diversity Code.

³¹ Gray’s Inn Response, para 4.

³² <http://www.barstandardsboard.org.uk/standardsandguidance/eanddcode/eanddcodeannex/>

³³ Lawyers for Disability Equality; Miss H Smith; the Disability Sub-Group of the Equality and Diversity Committee.

³⁴ Section 7A-B, Disability Discrimination Act 1995.

Guaranteed Income Schemes

338. Many students will, as we have said, arrive at the Bar with large loans. Many barristers leaving the profession cite anxiety over income as their reason for departure. Although there are no relevant statistics, it is inherently probable that this is a factor which is more likely to impinge on those from less financially privileged backgrounds.
339. Financial difficulties at the BVC and pupillage stages are also likely to be relevant to retention. Older entrants may be particularly disadvantaged by concerns about financial insecurity and existing responsibilities, as they are more likely to have homes and children to maintain.
340. The responses to the Interim Report indicated little support for requiring Chambers to guarantee income during the early years (as some Chambers already do in practice). This may be simply impracticable for some smaller Chambers, and it may be seen by others as unduly prescriptive. We do not, therefore, consider that Chambers should be obliged to guarantee income either for new tenants or for those with a reduced income as a result of maternity or disability.
341. We do, however, recommend that the Bar Council should encourage Chambers to consider guaranteed income schemes for barristers in their early years of practice. Such schemes have obvious advantages, and information should be provided to Chambers as to how such schemes operate.

Mentoring

342. We believe that many Chambers could and should make greater efforts than they do to ensure that work is fairly distributed, and to monitor career development, in accordance with the procedures recommended in the Equality and Diversity Code.
343. These measures may be particularly important in encouraging barristers from disadvantaged backgrounds to remain in practice, maternity leavers to return to practice, and those who are or who become disabled³⁵ to remain in or return to practice.
344. We also think that Chambers should introduce mentoring for junior tenants and pupils. To be effective, mentors must have the knowledge and skill to provide support and to identify appropriate responses to issues that may arise, including disability and pregnancy. We therefore recommend that mentors be encouraged to undergo relevant training.

³⁵ Indeed in certain cases it could be said that this might be a “reasonable adjustment”.

Reasonable Adjustments

345. Responses to the Interim Report suggest that the Bar Council may not always be particularly accommodating in relation to matters such as continuing professional development and subscriptions, where absence due to illness or maternity disadvantages particular practitioners. It may be that the Bar Council could usefully address this issue, but we have not investigated it in any detail or discussed its implications with the Bar Council; accordingly, we do not think it right to make any specific recommendations in that connection.
346. Concern was also expressed in some responses about the location and timing of Bar meetings, on the basis that such arrangements could disadvantage some practitioners.³⁶ We are glad to note that the Bar Council has made efforts to ensure that practitioners outside London can fully participate in meetings, by the use of telephone conferencing, for example, and this may also assist others. It is clearly desirable that, in so far as is practicable, all members of the Bar should have a realistic opportunity to participate in the Bar Council's business.

³⁶ Crown Prosecution Service Response.

CHAPTER 9

STATISTICS, MONITORING AND FUNDING

Statistical Review

347. It would have been desirable for the purposes of our report to have had access to definitive evidence as to the extent to which different groups in the population proceed through the different stages of entry to the Bar. Looking forward, it seems to us essential that the Bar should monitor and evaluate itself in regard to these matters. This endeavour fits into the broader objective that all branches of the legal profession and Government should be in a position to monitor performance in respect of diversity, as set out in the Government's response to the Legal Services Consultative Panel in 2005 (Increasing Diversity in the Legal Profession: DCA November 2005).
348. As stated in paragraphs 33 and 34 of Chapter 2, Professor Chalkley has advised the Working Party that the statistical evidence currently available is unsatisfactory in terms of enabling reliable conclusions to be drawn, and his helpful paper, annexed as Appendix 7, provides explanations for this opinion and advice as to the future. As a result of that advice, we make the following recommendations in relation to the collection of statistics.
349. **Recommendation 50: The Bar Council should establish a data resource that is based upon detailed information concerning background and progress of entrants to the profession – an Individual-Level data set.**
350. **Recommendation 51: The Bar Council should work towards data anonymisation and secure storage to permit BVC providers and Bar Mutual to supply individual-level data.**
351. **Recommendation 52: The Bar Council should arrange for a detailed statistical analysis of the target cohort data (and any further cohorts) to establish whether there are unexplained biases either in favour of or against particular groups of individuals.**
352. **Recommendation 53: The Bar Council should consider whether additional analysis would be useful in order to determine whether there are regional biases in the entry process, the nature of the relationships between educational background, ethnicity and socio-economic background of entrants and the extent of similarities or differences between the performance of students qualifying from different BVC providers.**

Implementation and Costs

353. In formulating our proposals and recommendations we recognise that there will be cost and other resource implications to which further consideration will need to be given by those most directly concerned with their implementation. Our recommendations will no doubt have different resource implications for self-employed and employed practitioners, Chambers, the Bar Council, the Inns of Court, the Circuits, BVC providers and others.
354. We recognise that the Bar is a relatively small profession and we have been concerned to avoid imposing significant additional cost and compliance burdens on the profession whilst remaining faithful to our terms of reference. For example, we are aware that additional expenditure by the Bar Council of £60,000 equates to an increase in the amount of the annual Practising Certificate Fee of 1%. Many of our recommendations build on existing initiatives of the Bar Council and the Inns, and we believe they will have comparatively minor additional resource implications. Nevertheless, the implementation of some of the recommendations may involve greater costs.
355. For instance, our recommendation that the Bar Council should consider the provision of a central co-ordinating role (or “Education and Careers Ambassador”) with responsibility for streamlining the information, materials and communications, in order to promote better relations between the Bar and schools, would plainly involve relatively substantial costs. Before the recommendations could be implemented, careful consideration will have to be given as to how they can be funded. Similar considerations apply to implementing our recommendation for the provision of DVDs about a career at the Bar for schools and universities.
356. We therefore recommend that the Bar Council should oversee the implementation of our recommendations, including those with significant resource implications, in order to agree priorities for implementation and the development of implementation plans.
357. We further recommend that the progress of implementation of our recommendations should be regularly monitored.

Continuous Review of our Recommendations

358. At various stages in this report, we have made reference to the need for initiatives aimed at improving access to the profession to be kept under continuous review.
359. Many of the problems we have identified have been the subject of numerous reports over the years as summarised in Appendix 4. Unfortunately, none of these earlier reports has resulted in sustained and co-ordinated remedial measures.
360. We believe and hope that few of our recommendations will be particularly controversial. More importantly, we believe and hope that if all our recommendations are adopted and progressed methodically, they will effect a real improvement in access to the Bar, and in particular, in the ability of people from

lower socio-economic groups to enter the profession. We, therefore, emphasise the need for methodical progression and monitoring of that progression.

361. We suggest that, in the first instance, the Bar Council should adopt and support our recommendations, and put in place an Access Monitoring Group aimed at ensuring that progress is made in each of the areas we have reported upon. In addition, we suggest that the Access Monitoring Group should be charged with producing six-monthly reports to the Bar Council tracking progress.
362. The bi-annual reports should not only record what has been done across the spectrum of our recommendations, but should also review and recommend further steps that need to be taken to make more effective progress as matters develop. It is impossible for us to be prescriptive as to what such measures might be, but we are very anxious that the problems of access should not be regarded as solved simply because of the publication of this Report. Action and close supervision will be needed in these areas for many years to come if the socio-economic profile of the profession is to change so as more properly to represent the public it serves.

Recommendations as to Monitoring

363. **Recommendation 54: The Bar Council should oversee the implementation of our recommendations, including those with significant resource implications, in order to agree priorities for implementation and the development of implementation plans.**
364. **Recommendation 55: The progress of implementation of our recommendations should be regularly monitored.**
365. **Recommendation 56: An Access Monitoring Group should be established by the Bar Council to ensure that progress is made in implementing our recommendations.**
366. **Recommendation 57: The Access Monitoring Group should produce twice-yearly reports to the Bar Council tracking progress, and recommending further steps that need to be taken to improve access to the profession.**

LIST OF APPENDICES

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MEMBERS OF THE ENTRY TO THE BAR WORKING PARTY

*The Rt Hon Lord Neuberger – *Chairman*

The Rt Hon Sir Stephen Sedley
The Hon Sir Michael Burton
Her Honour Judge Patricia Dangor
His Honour Judge Alan Pardoe QC
Gary Burrell QC
Robert Francis QC
Nicholas Green QC
*Duncan Matthews QC
Christopher Nugee QC
Richard Salter QC
Michael Swainston QC
*Richard Wilson QC
*Geoffrey Vos QC
*Sasha Blackmore
#Dr John Carrier
*Professor Martin Chalkley
Professor Malcolm Grant
*Yeshim Harris
*Mark Hatcher
*Peter Marcus
Michelle Mayoh
*Karon Monaghan
Patricia Pank
*Debra Powell
Sophie Shotton
#Dr Valerie Shrimplin
*Karen Squibb-Williams
#Emily Windsor

Bhavna Patel (*Secretary*)

* Member of the Executive Committee
#Observer appointed by the Bar Standards Board

ENTRY TO THE BAR WORKING PARTY INTERIM REPORT

INTRODUCTION

1. Neither the professional standing of the Bar of England and Wales nor the valuable public service it provides can be in doubt. Barristers have a justified reputation for integrity, independence, legal expertise, and advocacy. An independent and respected Bar performs an important role in maintaining many of the core values of a modern democratic society. However, the profession currently suffers from at least a perceived exclusivity. Although it is true that only a limited number of people may have the combination of ability commitment and integrity to practise as barristers, that cannot alter the force of the point that access to the Bar should be equally open to all, irrespective of socio-economic background, ethnicity, age, gender, or disability.
2. The present situation on access appears to fall short by some margin from that standard. Work is under way to establish the extent of the problem, and what the Bar can do to address it. In this connection, it is only fair to record that there are general economic and social factors involved, and that they are quite outside the control of the Bar. However, far from indicating that nothing needs to be done, this underlines the desirability of the Bar doing its best to ensure as level a playing field as possible when it comes to recruitment.
3. The Bar Council and the Inns of Court have taken steps to encourage the most able to come to the Bar by way of scholarships and bursaries, but it is clear that further steps could be taken to eliminate any inappropriate, albeit unintended, barriers to entry. Increasing ease of access for able and committed potential candidates is self-evidently right from the point of view of fairness, but it will also improve standards if the best candidates, regardless of background, are able to practise as barristers. The Bar Council's Training for the Bar Committee Working Party will state in its forthcoming report that: "the future of the Bar...ultimately lies with...the quality of those coming through from the (Bar Vocational Course ('BVC'))".

THE WORKING PARTY

4. The Working Party was formed in late 2006, at the instigation of the Bar Council with the active support of the Inns of Court, to investigate how entry to the Bar could be improved. Its formal remit was to develop proposals for (a) improving funding for new entrants, and (b) identifying and reducing barriers to entry for minority and socially and economically disadvantaged students.
5. The members of the Working Party include employed and self-employed barristers, judges, people concerned with the organisation of the Bar, and people with outside expertise. A list of the 29 members is set out in Appendix 1. It is not possible for such a large group of people to operate on its own in a properly focussed way, so a smaller Executive Committee, to prepare reports and proposals for the consideration

of the Working Party, has been established. The members of the Executive Committee are marked with an asterisk in the list in Appendix 1.

6. A number of reports have been produced by committees set up over the past 16 years. These committees are identified in Appendix 2, which was prepared by Lisa Wilson, and contains a valuable summary of their respective recommendations. The information gathered, and the recommendations made by these committees, though sometimes out of date, will often be of real value. Although some of those recommendations have been implemented, many have not, mostly because they turned out to be unworkable or unacceptable at the time. What makes this Working Party different from these earlier committees is (a) the very wide-ranging breadth of expertise, commitment and experience of the membership, from which it can draw, and (b) its remit, which is far wider than that of any previous committee, covering the whole of the period from school to early years at the Bar, and every aspect of access to the Bar.
7. The Bar Council has taken a number of recent initiatives, in addition to setting up the Working Party, as a result of its concern to improve access to the Bar for suitable candidates from all backgrounds. Listed in Appendix 3 are the committees which are currently considering, or have recently reported on, relevant or connected issues. The Working Party is keeping closely in touch with the thinking of these Committees because (a) both duplication of research and thought and inconsistent conclusions must be avoided if at all possible, and (b) we may well be able to benefit from their work.

THIS REPORT

8. This is an interim report which the Working Party decided should be published before Easter 2007. Its purpose is (a) to indicate the progress we have made so far, and (b) to solicit representations from all interested parties. Such an interim report has to be issued relatively early in the life of the Working Party if it is to result in representations which can be fully considered. Inevitably, any representations we receive may cause us to revisit some of what we say in this document. Accordingly, it must be appreciated that the proposals set out towards the end of this report must, at least in the main, be treated as preliminary conclusions or identifying areas which are worth investigating.
9. Three important points should be made at the outset; they apply to the provisional conclusions in this report, and will almost certainly apply to the recommendations in our final report. First, it would be absurd for us to pretend, or for others to expect, that we will be able to find a universal panacea or an immediate solution to the problems we have been asked to address. The nature of the problems, and indeed the nature of society, is such that what is needed is a combination of co-ordinated and practical steps, whose intended success will only become apparent over time. This in turn requires a considered, structured and co-ordinated approach from the Working Party.
10. Secondly, not every conclusion we eventually reach is likely to be supported by all members of the Working Party. It would be surprising if it were otherwise with a group of nearly 30 people, who have been selected, not only for their expertise and commitment, but also to represent different experiences and viewpoints. Having

said that, every member of the Working Party is committed to its aims and supports the specific conclusions reached so far.

11. Thirdly, it would be quite wrong to give the impression that the Bar Council, the Inns of Court and members of the Bar individually have been inactive or unconcerned about the problems we have been set up to tackle. The Inns between them provide nearly £4 million a year by way of student scholarships, and successfully encourage many of their barrister and judge members to devote much of their free time to student and continuing education. The Bar Council has shown its concern in a number of ways, including the initiatives summarised in Appendices 2 and 3. Many sets of chambers provide mini-pupillages to those at school or university, and individual barristers often visit schools and universities. However, these valuable actions do not mean that there is no need for a more structured and comprehensive set of proposals.

THE NATURE OF THE PROBLEMS

12. We have read the recent contribution to the subject of equality of opportunity in “Fairness and Freedom: The Final Report of The Equalities Review”. On page 6, it defines an equal society as one that “protects and promotes equal real freedom and substantive opportunity to live in the ways people value and would choose, so that everyone can flourish”. On the same page, it emphasises the “need to focus on those at the bottom end and make sure that their achievements improve at a faster rate than those at the top”. On page 10, the Equalities Review stresses the importance of measurement and transparency, discussed more fully at pages 95 to 97 and 109 to 111. Particularly relevantly for the Bar is the point that a “positive role [is] required of institutions in removing barriers or constraints and making sure that opportunities to flourish are real” – page 16. In the light of the point made at the end of paragraph 8 of this report, it is worth also referring to the time-scales indicated on page 24 of the Equalities Review Final Report.
13. Of course, many of the aims of the Equality Review represent the wider aspirations of society generally, and, as already mentioned, the opportunities for people to live and work in the ways they choose depend greatly on general social factors like access to education. The Bar is inevitably constrained by such factors, and can only select from those who excel and who present themselves as candidates. However, more can be done to encourage the best to present themselves, irrespective of background, and more can be done to identify those from less privileged backgrounds who excel.
14. It is also right to mention the recent statutory equality duties, which are binding on public bodies. In particular, public bodies have a duty to eliminate discrimination and to promote equality of opportunity under section 71 of the Race Relations Act 1971, section 3 of the Disability Discrimination Act 2005 and section 84 of the Equality Act 2006, to all of which we have regard. We acknowledge that any recommendations we make will have to satisfy the reasonable adjustments duties. We also bear in mind that the Government’s Discrimination Law Review is expected to be published later this year.
15. More specifically for present purposes, the problems for prospective barristers can be divided into two categories, although they are in practice connected. The first

category of problems is social in nature; the second is economic. In broad terms, we would summarise the components of the two categories as follows.

16. So far as the social aspect is concerned, the Bar is perceived in many quarters as predominantly populated by those educated at public schools, and by Oxbridge graduates. This perception can discourage people from less privileged backgrounds (or indeed more mature people), and those advising them, from considering the Bar as a profession. Although there have been substantial improvements over the past few years, there is also reason to believe that the methods by which some chambers select pupils and tenants may serve, unintentionally, to reinforce this perception. This problem has been compounded by a lack of easily available, accurate, full and clear information about how to embark on a career at the Bar, and what such a career entails.
17. As for the economic problem, embarking on a career at the Bar involves a combination of present expense and loss of income with future financial and employment risk. A law graduate has to study the BVC, which takes a full academic year. A graduate in any other subject has to study for an additional prior year. The BVC graduate then has to do a year of pupillage, at the end of which he or she may be offered a seat in chambers or a job at the employed bar. The BVC costs around £13,000 per year (and there are, of course, living expenses, and in some cases, childcare costs, in addition). These disadvantages are mitigated by the availability of scholarships, but a poor person, who may often have accumulated substantial debts already, will obviously be more likely to be put off a career at the Bar by these features than someone who is better off financially. Pupillages are paid, but the average pay is not high compared with what many commercial solicitors and other professions pay. Many of those who do the BVC never get pupillage: annually, there are about 550 pupillages for the 1800 who pass the BVC. Quite a few who get pupillage do not get a tenancy, because many pupils from previous years are still applying for places in chambers. After entering chambers many barristers earn relatively badly, especially in their first few years of practice.

THE WORKING PARTY'S AIMS

18. The Working Party plans to issue its final report before the end of 2007. This is an ambitious aim. It carries with it the problem that not all the collectable relevant facts can be gathered, analysed and considered, within a year. We have, however, already put together an impressive array of data from numerous sources. Assembling wholly complete data would be prohibitively expensive, and, even more importantly, would involve waiting several years before reporting, by which time much of the data would be historic. It is important that a report is produced as soon as practicable, provided it is properly based on reliable information, and there is enough time to formulate proposals. The Working Party believes that, with our existing data and the valuable advice of Professor Martin Chalkley, an economic statistician, a final report within the intended time-frame is achievable.
19. In order to concentrate our minds on identifying the problems and seeking to find solutions in a structured and co-ordinated manner, the Working Party has agreed a list of questions which may be worth considering in the present connection. The list is attached at Appendix 4. Many of the questions will be relatively easy to answer,

Appendix 2

and a number of the questions are repeated in relation to different stages. The list may at first sight seem over-analytical, even pedantic, but we believe that it will help ensure a structured approach, which does not overlook any aspect. Professor Chalkley has recently produced a draft framework paper which has already proved useful in identifying the questions (and indeed possible answers) on which the Working Party should concentrate. The paper is attached at Appendix 5.

20. Apart from considering papers and having discussions at several meetings, members of the Working Party have already received a number of unsolicited (but very welcome) representations, and have had valuable and supportive discussions with a number of people (including the Lord Chancellor, the Attorney General and the Chairman of the Judicial Appointments Commission). The Working Party has also recently sought the opinions and experiences of relevant organisations on various issues with a view to obtaining further evidence on which to proceed. In Appendix 6, there is a copy of our letter together with a list of the recipients.

PROVISIONAL VIEWS

21. Our current thoughts are summarised in the next four paragraphs. Some of the conclusions seem so sensible and uncontroversial that we think that steps should be taken to implement them now. They include the proposals in paragraphs 22(a) to (e), 23(a), and 24(d). Almost all the other potential recommendations require further consideration and discussion with interested parties, such as past, present and prospective students, educational advisers, the Inns, the Bar Standards Board, BVC providers, the Circuits, and banks. One or two of the recommendations are more controversial and are discussed briefly in paragraphs 26 to 31.

22. Schools

We provisionally make the following proposals: -

- (a) Far better information for school students through improved websites and information sheets (giving more and clearer details of e.g. applying for and pursuing the BVC, the nature of a barrister's working life, levels of cost and sources of funding, and likely levels of income once in practice) and a dialogue with those responsible for careers advice to students.
- (b) Placement programmes to inform schools and school students and allow less privileged children to see the Bar at first hand before they have to decide whether to read law at university.
- (c) Further mock trial competitions.
- (d) Further lectures by barristers to schools of all types in all areas.
- (e) Mentoring of school students by barristers who have attended placement programmes or mini-pupillages.

23. Universities

- (a) We are presently of the view that far better information about careers at the Bar (as summarised in paragraph 22(a) above) should be available to students considering the BVC.

We also intend to look into the following possibilities: -

- (b) The feasibility of fuller and wider discussions with law lecturers (and lecturers in other subjects) as to the advice they should give to students about a career at the Bar.

- (c) The feasibility of increasing the frequency of visits, and the number of institutions visited, by barristers for the purpose of talking to students about a career at the Bar and judging mock trials.
- (d) Whether the Bar and chambers could reasonably, and should, cast their net more widely when it comes to targeted recruitment.

24. **BVC**

We provisionally make the following proposals: -

- (a) There should be greater controls over the quality of the BVC.
- (b) There should be discussions with BVC providers and others with a view to increasing the standard required to pass the BVC.
- (c) There should be a requirement that all BVC providers widely publish the number of pupillages and tenancies their graduates obtain for the previous 5 years.
- (d) A scheme be set up to offer loans on preferential terms, alongside the Inns' scholarships and award schemes, to facilitate studying for, and entry to, the Bar.

We also intend to look into the following possibilities: -

- (e) Whether or not to introduce a formal limitation on BVC numbers.
- (f) An extension of part-time BVC courses, and the introduction of an on-line BVC course in conjunction with Open University type retreats.
- (g) Increasing, or at any rate changing, the standards required of those proposing to enrol for the BVC.
- (h) Whether it would be possible and desirable to introduce a voluntary aptitude test, run by the Bar Council or the Inns, which would be available to all students considering the BVC to assist them to ascertain the likelihood of obtaining pupillage and a tenancy/ employment as a barrister, and of succeeding at the Bar.

25. **Pupillage**

We provisionally make the following proposals: -

- (a) Active measures should be taken to encourage employers to become approved pupil training organisations, and to offer employed pupillages
- (b) Subject to sensible rules, pupils should be permitted to earn money during pupillage.
- (c) The Bar Council should offer further training for all chambers in fair pupil selection to ensure that the most able students are selected, irrespective of background.

We also intend to look into the following possibilities: -

- (d) Requiring chambers and pupillage training organisations to inform students of the outcome of their pupillage applications before the BVC providers require commitment to and payment for the BVC.
- (e) Part time pupillages.
- (f) Reviewing the rule against unpaid pupillages.
- (g) The Bar, or individual sets of chambers, being required to offer specific numbers of paid pupillages.

COMMENTS ON PROVISIONAL VIEWS

26. We have considered whether there is too much focus on the Russell Group of universities when it comes to recruitment, and whether a broader focus should be encouraged. However, the complaint that a disproportionate number of barristers come from Oxbridge or the Russell Group can be answered, at any rate to some extent, by the point that, in very general terms, those school leavers who tend to be encouraged to apply, and tend to be attractive to, those universities, will be more likely than average to have the abilities which are appropriate for the Bar. Of course, those universities have their own programmes to ensure they accept a diverse selection of students. There are many graduates who did not or could not choose to go to those universities, or were wrongly rejected by them, or are later developers, who are equally or more able and fit for the Bar than Russell Group graduates. However, it would be simply unrealistic not to acknowledge that practical considerations, as well as tradition and preconceptions, explain the preponderance of graduates from certain universities at the Bar. It is, nonetheless, also beyond doubt that we should be encouraging the most able from all universities to enter the profession.
27. The question whether there should be a limitation on BVC numbers, raised in paragraph 24(e), is a difficult one. In favour of imposing a limit are the following factors. First, the BVC is a course targeted for a career at the Bar, and producing between 3 and 4 BVC graduates for each pupillage would appear to amount to an over-supply. Secondly, on those figures, there will be many disappointed graduates, who will have given up significant time and money on a venture that would appear to have failed. Thirdly, the resources of the Inns and the Circuits, in terms of both personnel (barristers providing education and staff providing pastoral care) and money (available for expenses, and, in the case of the Inns, scholarships and bursaries) is limited. There is obvious sense in concentrating those limited resources on BVC students who will practise at the Bar.
28. However, it may well be right not to impose any such limit on BVC numbers for the following reasons. First, to limit numbers could work against our fundamental aims. Secondly, provided BVC entrants are properly informed of the risks, it should arguably be a matter for them whether they take those risks. Thirdly, the over-supply of BVC graduates is not as great or as damaging as it seems: some students (including many from overseas) do not intend to practise in this country, and most of those who do so intend but do not succeed, find good jobs on the back of the BVC qualification. Fourthly, there may be better ways of dealing with any over-supply, such as those mentioned in paragraphs 24(a), (b), (c), (g) and (h).
29. Before the ideas in paragraphs 24(b), (g) and (h) could become firm recommendations, they would have to be particularly carefully considered. There is a danger that they could make it more, rather than less, difficult for those from socially disadvantaged backgrounds to embark on the BVC. However, it does appear that there may well be a need to discourage those inherently unsuited from enrolling for the BVC. Not only can it be said to be in their interest to discourage them, but less able students will often hold back the more able ones, and consequently reduce the standard and value of the course.
30. The notion of aptitude tests, mentioned in paragraph 24(h), is also a difficult one. We would not want to suggest the introduction of even voluntary aptitude tests,

Appendix 2

unless satisfied that they could be devised in such a way as not to work to the disadvantage of those who we are particularly anxious to help, namely those from less privileged backgrounds.

31. The proposals in paragraphs 25(d) and (g) are potentially controversial and would represent a significant shift from the present policies of the Bar Council. Their feasibility and their consequences require particularly careful thought. Like the other proposals discussed in paragraph 25, their practicality and effect on chambers will need to be discussed with the Bar Council.
32. We are conscious that there is little in our preliminary proposals which relates to finance. That is a very large and very important topic, which is receiving our close attention. It is also the subject of consideration and discussion with interested parties by the committee chaired by Nicholas Green QC. The Working Party has some preliminary ideas on the topic, in addition to that expressed in paragraph 24(d). However, we consider that it is a topic on which it is more sensible to express only a limited view at present, as the various ideas are interlinked and involve on-going discussions with different organisations.

REPRESENTATIONS

33. We would very much welcome representations on any aspect arising out of this interim report and the questions in Appendix 4, whether concerned with specific or with general issues, whether raising a new point or dealing with a point we have mentioned, and whether critical or supportive, from any interested person or group. Any such representations should be sent by 31 May 2007 to Bhavna Patel, Bar Council, 289-293 High Holborn, London WC1V 7HZ or by email to: bhavnapatel@barcouncil.org.uk

Entry to the Bar Working Party

April 2007

LIST OF RESPONDENTS TO THE ENTRY TO THE BAR INTERIM REPORT

1. Lincoln's Inn
2. Gray's Inn
3. Middle Temple
4. Inner Temple
5. Bar Standards Board
6. South Eastern Circuit
7. Equality & Diversity Committee of the Bar Council
8. Employed Barristers Committee of the Bar Council
9. Young Barristers Committee of the Bar Council
10. Disability Sub-Group of the Equality & Diversity Committee
11. Judicial Appointments Commission
12. Crown Prosecution Service
13. Bar Association For Commerce Finance & Industry
14. Association Of Graduates Careers Advisory Services
15. London Common Law & Commercial Bar Association
16. Middle Temple Student Association
17. Technology & Construction Bar Association
18. Connexions Cornwall & Devon Ltd
19. The Lawyer For Disabled Equality
20. Bar Concern
21. University Of Derby
22. Inns Of Court School Of Law
23. The College School Of Law
24. Jonathan Gaunt QC – Falcon Chambers
25. Joanne Wicks – Wilberforce Chambers
26. Gilead Cooper QC – 3 Stone Buildings
27. 12 King's Bench Walk
28. Dr Peter Marks – 3 Temple Gardens
29. Blackstone Chambers
30. Fountain Court Chambers
31. Ami Feder – Lamb Building
32. Jane Nicholls – Oriel Chambers
33. 23 Essex Street
34. Tom Wesel, – employed barrister – King's College London
35. Innocent Okorji Esq
36. James E. Petts – 55 Temple Chambers
37. Jennifer Horne-Roberts – Goldsmith Chambers
38. Coram Chambers
39. Guy Mansfield QC – 1 Crown Office Row
40. Wilberforce Chambers Pupillage Committee
41. 4 Pump Court
42. Stan Heslop – Exxonmobil Aviation
43. Susan Preston – Parent
44. Steve Behr
45. Anonymous
46. Philip Morgan – non-practicing barrister
47. Simon Brandon – non-practicing barrister
48. Damian Wynne – LLB mature student
49. Heather-Anne Smith

NOTE OF RESPONSES TO THE INTERIM REPORTIntroduction

1. The Interim Report of the Entry to the Bar Working Party ('the Working Party') was produced in April 2007. It sought to address those issues set out in Appendix 4 of the Interim Report. Paragraphs 21 to 25 of the Interim Report outlined the provisional views of the Working Party, with amplification given in paragraphs 26 to 32. Pursuant to paragraph 33 of the Interim Report, representations were sought from all interested parties on any aspect of the proposals in the Interim Report or any of the questions outlined in Appendix 4.
2. Around 50 submissions were received in total from a wide range of parties including (but not limited to) Chambers, BVC providers, and universities. The submissions covered all aspects of the proposals made by the Working Party. This paper aims to summarise those views and to draw out some trends from the representations made.
3. The Interim Report sets out the proposals of the Working Party in four key areas: schools, universities, BVC, and pupillage. This paper mirrors that approach but also includes a final miscellaneous category for other issues arising from, or related to, questions listed in Appendix 4.

Summary Of Views

4. Perhaps unsurprisingly, the majority of the responses received concerned the current standard, and future of, the BVC. The comments on the BVC as it stands were overwhelmingly negative. Most contributors welcomed the proposals of the Working Party's to improve the quality of the BVC and the standard required to pass. However, proposals for formal limits on the number of places on the BVC were more controversial.
5. The provisional proposals made by the Working Party in relation to the school, university and pupillage stages generally received a positive response (subject to the usual caveats regarding funding). Most contributors did not see these stages as having nearly as significant problems as the 'bottleneck' of students between the BVC and pupillage.
6. In terms of those issues on which provisional proposals were not made, special attention ought to be drawn to the issue of access to the Bar of those with disabilities, retention of female barristers, and barriers to entry for mature students. Each of these issues was raised by a number of contributors all of whom wished them not to be overlooked by the Working Party in their deliberations.

Schools

7. The Interim Report provisionally made the following proposals:

Far better information for school students through improved websites and information sheets (giving more and clearer details of e.g. applying for and pursuing the BVC, the nature of a barrister's working life, levels of cost and sources of funding, and likely levels of income once in practice) and a dialogue with those responsible for careers advice to students.

Placement programmes to inform schools and school students and allow less privileged children to see the Bar at first hand before they have to decide whether to read law at university.

Further mock trial competitions.

Further lectures by barristers to schools of all types in all areas.

Mentoring of school students by barristers who have attended placement programmes or mini-pupillages.

8. There was widespread support for better information for students on a career at the Bar³⁷. It was often mentioned that the perception of the Bar as a socially exclusive group ought to be targeted at as early a stage as possible. The provisional proposal of the Working Party that dialogue should be sought with those responsible for careers advice was generally thought to be the most efficient way of targeting those of school age.
9. Although improved information at the school-stage was almost universally welcomed, there were concerns about how the information could be provided in a cost-effective manner. The submission from Gray's Inn suggested that it could be cost-effective to supply a professionally made CD to schools for pupils to view at their leisure. 12 King's Bench Walk argued that the Bar Council should introduce a new and improved website offering clear and straightforward advice on careers at the Bar. It was emphasised that the present site is not adequate and is confusing.
10. Concerns were also raised as to the nature of placement programmes to allow those from less privileged backgrounds to see the Bar first hand³⁸. 12 King's Bench Walk, Fountain Court Chambers, 4 Pump Court, Gray's Inn, and Middle Temple all emphasised that mini-pupillages for school students would not be appropriate. It was thought that school students would be too young to benefit properly from the experience and that and Chambers might not cope with demand. This was especially the case given the overwhelming demand for mini-pupillage from students.
11. Although the principle of an increase in the number of mock trial competitions gained widespread approval³⁹ there were reservations about where the funding for

³⁷ See Interim Report, paragraph 22 (a).

³⁸ See Interim Report, paragraph 22 (b).

³⁹ See Interim Report, paragraph 22 (c).

the extra competitions might come from. It was noted that the Inns already supply £5,000 each towards mock trial competitions and that extra funds might have to come from other sources.

12. 23 Essex Street and 4 Pump Court both agreed that there should be more school visits by practitioners to explain entry and career opportunities⁴⁰. However, Middle Temple sensibly questioned how all schools (or even all schools in disadvantaged areas) might be reached given the size of the pool of those available to undertake school visits. Undue pressure might be put on the Junior Bar to deliver this objective. This issue might partly be addressed by the suggestion made by Inner Temple that workshops or open days (similar to those run by commercial providers for those considering careers in medicine) could be run for sixth formers to give an insight into a career at the Bar. Moreover, an encouragement of more court visits would allow school students to see the justice system at first-hand.
13. It was also thought that although mentoring had a place at the pupillage stage, it was inappropriate at the school stage.⁴¹
14. The Inns of Court School of Law made the point that there was little evidence to suggest that the real problem with access lies at the school or university stage. Students from state schools make up the majority of those on the BVC. Ethnic minority statistics are difficult to interpret because of the large numbers of students from foreign jurisdictions. Although information could always be improved, statistically it does not seem that the school-stage presents a real barrier to entry to the Bar.

Universities

15. The Interim Report provisionally made the following proposals:

Far better information about careers at the Bar should be available to students considering the BVC.

The Working Party also intends to look at the following possibilities:

The feasibility of fuller and wider discussions with law lecturers (and lecturers in other subjects) as to the advice they should give to students about a career at the Bar.

The feasibility of increasing the frequency of visits, and the number of institutions visited, by barristers for the purpose of talking to students about a career at the Bar and judging mock trials.

Whether the Bar and Chambers could reasonably, and should, cast their net more widely when it comes to targeted recruitment.

⁴⁰ See Interim Report, paragraph 22 (d).

⁴¹ See Interim Report, paragraph 22 (e).

16. In a similar way to the provisional proposals made by the Working Party with regard to the school stage, the availability of better information about careers at the Bar was widely welcomed and thought to be “sensible and uncontroversial” (Gray’s Inn)⁴². It was also thought that the supply of a professionally made CD / DVD to universities would be a cost-effective way of improving the quality of information available at this stage. Moreover, it was thought that discussions with law lecturers regarding advice to give to aspiring barristers would be another efficient way of disseminating information⁴³.
17. In terms of the information that might be provided, it was thought that students might be able to make more informed decisions about careers at the Bar if they were given some information about income prospects in the various different areas of the Bar. Lincoln’s Inn recognised the difficulty in obtaining this data but thought that consideration ought to be given to the issue.
18. Several submissions highlighted the need for careers advisors to be given more information / training as to careers at the Bar. Some anecdotal examples were given of students (particularly non-law students) being unwittingly misled by careers advisors. 12 King’s Bench Walk suggested that the Bar Council should run training days for university careers advisors so that those not studying law are not given misleading information.
19. The need to target students at a very early stage of their university careers was emphasised. This was thought especially necessary at Russell Group universities where City Law Firms attempt to recruit the brightest candidates during their ‘milkround’.
20. Although many submissions tended to think that there should be more mooting competitions and practitioner lectures⁴⁴, 4 Pump Court stated that there was already a plethora of university moots and it was not sure what would be gained by more of them. In a similar vein, it was stated in some responses that there was no need to promote mini-pupillage further as there was already a voluminous number of applicants. Nevertheless the University of Derby thought that Chambers’ selection procedure for mini-pupillages ought to be more transparent. Dr Peter Marks also proposed the introduction of more paid mini-pupillages to give a taste of advocacy and its practical exposition.
21. The possibility of wider targeted recruitment was generally treated with some scepticism in the responses⁴⁵. Chambers tended argue that they used their limited resources at Russell Group university career fairs and moots, where they perceived the best candidates for pupillage to be studying.
22. Fountain Court Chambers also noted that it would be preferable if OLPAS did not coincide with university finals / CPE examinations.

⁴² See Interim Report, paragraph 23 (a).

⁴³ See Interim Report, paragraph 23 (b).

⁴⁴ See Interim Report, paragraph 23 (c).

⁴⁵ See Interim Report, paragraph 23 (d).

BVC

23. The Interim Report provisionally made the following proposals:

There should be greater controls over the quality of the BVC.

There should be discussions with BVC providers and others with a view to increasing the standard required to pass the BVC.

There should be a requirement that all BVC providers widely publish the number of pupillages and tenancies their graduates obtain for the previous 5 years.

A scheme be set up to offer loans on preferential terms, alongside the Inns' scholarships and award schemes, to facilitate studying for, and entry to, the Bar.

The Working Party also intended to look at the following possibilities:

Whether or not to introduce a formal limitation on BVC numbers.

An extension of part-time BVC courses, and the introduction of an on-line BVC course in conjunction with Open University type retreats.

Increasing, or at any rate changing, the standards required of those proposing to enrol for the BVC.

Whether it would be possible and desirable to introduce a voluntary aptitude test, run by the Bar Council or the Inns, which would be available to all students considering the BVC to assist them to ascertain the likelihood of obtaining pupillage and a tenancy/ employment as a barrister, and of succeeding at the Bar.

24. The overwhelming majority of feedback centred on the BVC stage and the preliminary proposals of the Working Party in this respect. There appears to be genuine concern, especially amongst Chambers, that the BVC is unfit for purpose and that this impacts both on those students who are admitted to the course without a realistic prospect of pupillage, and on those who are tasked with continuing legal training post-BVC.
25. The quality of the BVC was generally thought to be inadequate and more control was needed in this area⁴⁶. Only the BVC providers themselves actually attempted to defend the quality of the BVC. The Inns of Court School of Law stated that it was not clear how the current standard for the BVC of 'ready for pupillage' could be justifiably increased. Moreover, it was argued that any extra quality controls on the BVC would run counter to current accepted Quality Assurance theory.
26. Chambers were the most vehement in their criticism of the quality of the BVC. 12 King's Bench Walk commented that: "No member of Chambers had any positive comments to make about the quality of teaching staff on the Bar Vocational Course...It is thought that the former practitioners were often not well suited to teaching bright students". They added that: "The course has no more academic value than a GCSE...students are generally penalised for producing work that

⁴⁶ See Interim Report, paragraph 24 (a).

differs from the samples handed out by BVC providers”. 4 Pump Court similarly noted that: “Feedback from our own pupils and junior tenants is to the effect that the BVC does not really equip students with the skills and knowledge which they actually require when they embark on pupillage”. Wilberforce Chambers stated that: “The quality of teaching and assessment on the BVC is patchy and sometimes poor; students do not feel that their time on the course is well-spent”. It was also a concern that the course is too heavily biased towards criminal and general common law areas of practice. Implicitly, it was often recognised that the standard of the BVC is right to be that of ‘ready for pupillage’ but that this was not, in fact, what is actually being delivered by the course at present.

27. The representation from Gray’s Inn was not alone in commenting that there was no basis for the assertion in paragraph 28 of the Interim Report that students are able to find other good jobs “on the back of the BVC”. It was stated by several contributors that the qualification is worthless other than for the purpose of being called to the Bar.
28. Several contributors voiced concerns that bright students are continually frustrated by the futility of small-group sessions teaching in ‘knowledge’ subjects. Wilberforce Chambers stated that: “Able students find themselves held back by being taught in groups with those who are not as able”. Given the rigour of many student degrees, it was thought that such study could easily be performed independently. It was also mentioned that compulsory attendance requirements impliedly acknowledged that very few students would actually attend the sessions but for the attendance requirement. This was in stark contrast to the university stage where students were trusted to attend those lectures that they thought would be beneficial. Further, it was mentioned that assessments on the BVC are too arbitrary and subjective, with marks varying drastically depending on the individual assessor.
29. Lincoln’s Inn also raised concerns about the impact of those from foreign jurisdictions on the quality of the BVC: “There is a particular concern about the ability of some students to operate effectively in the English language and a unanimous view is that it is quite unacceptable for students in any learning group to be held back by their colleague’s problems with the language”.
30. The vast majority of responses stated that the Working Party was right to address the issue of the quality of the BVC and thought that quality should be raised as part of a general overhaul of the vocational training stage.
31. Many contributors thought that raising the standard required to pass the BVC was an integral part of increasing the quality of the course⁴⁷. Once again, Chambers were almost unanimous in this respect. Fountain Court Chambers stated that there was: “much to be said for raising significantly the academic content in the course, improving (and potentially reducing) the number of BVC providers”. Concerns were also raised that assessment of ‘knowledge subjects’ by means of multiple-choice tests simply led to last minute ‘cramming’. However, the Equality and Diversity Committee questioned whether there was any evidence to suggest that it was, in fact, too easy to pass the BVC. This could perhaps be addressed by the

⁴⁷ See Interim Report, paragraph 24 (b).

proposal of the Bar Standards Board to undertake a study to find out exactly where the BVC is thought to be weak and address these areas specifically. The Inner Temple also voiced concerns that there might be differing standards between BVC providers. It was suggested that this might be tackled by means of a final exam set by the Bar Standards Board.

32. There was almost universal acceptance of the proposal of the Working Party that all BVC providers should be required to publish the number of pupillages and tenancies their graduates obtained in the previous 5 years⁴⁸. There was some concern as to the rationale of the proposal though. Some contributors wished to emphasise that there was no correlation between BVC provider and pupillage prospects.
33. A preferential loan scheme received a measure of support within the representations received⁴⁹. The role of the Inns in providing scholarships for the BVC was widely praised and it was generally not thought that more could be done in this area. Nevertheless, it was noted that there was a need for extra funding to improve access. One contributor thought that the need for extra funding was pressing as those who received the largest scholarships from the Inns tended to be those who would go on to complete pupillage at Chambers with top awards.
34. Several of the representations agreed in principle that more loans should be available but not so as to increase the number of people undertaking the BVC. It was thought that further student debt for those without a realistic prospect of pupillage would not improve access and may well have the opposite effect.
35. The Equality and Diversity Committee opposed the use of commercial lenders to fund the BVC, given the current level of student debt. However, if it was thought that this was necessary as a last resort then the loans should be repayable over a long period and be interest free. The Committee also questioned whether the Inns could give more help in the area of accommodation than they do at present.
36. Contributors often dealt with the issues of regulating the number of places on the BVC and the entry requirements of the course together, with the latter being a tool for regulating the former.
37. The possibility of limiting the number of places on the BVC received a mixed response⁵⁰. There was consensus that there is a huge disparity between the numbers accepted on to the BVC and those likely to obtain pupillage. It was also generally accepted that this was problematic and that the Working Party was right to address the issue. Gray's Inn did question whether the problem was as significant as some had suggested, given that some of those who do not obtain pupillage at the first attempt do obtain pupillage subsequently. Moreover, a proportion of those who study for the BVC go on to have careers at the Bar in other jurisdictions.

⁴⁸ See Interim Report, paragraph 24 (c).

⁴⁹ See Interim Report, paragraph 24 (d).

⁵⁰ See Interim Report, paragraph 24 (e).

38. Particular concerns were raised that by improving access, the numbers on the BVC with no realistic prospect of pupillage would increase, with the only beneficiaries being the BVC providers. This was described in one response as “morally indefensible”. Some of the responses (mostly notably from the Inns) thought that it was in the interests of the profession to have a large pool of applicants from which to choose and that this would necessarily improve the quality of applicants to the Bar. However, it was widely accepted that it was not in the interests of students themselves to have so few of those who undertake the BVC obtain pupillage. Some suggested that an alternative way in which to tackle this problem would be to make the BVC qualification more transferable and marketable in other job markets. The Crown Prosecution Service said a decision was needed as to whether the BVC should be a professional vocational qualification, or a stand-alone qualification that may be used elsewhere.
39. Views were split on whether limiting numbers on the BVC would have a negative impact on diversity. The College of Law commented that: “there seems to be no way of limiting numbers without discouraging diversity” but other responses expressed a diametrically opposed view.
40. There also seemed to be confusion among the responses as to whether a limit on numbers would be open to legal challenge. Some contributors thought that there would be no problem as regulation of places occurs readily in other professions, whereas other representations opined that the OFT would be bound to investigate such an approach. The suggestion of 12 King’s Bench Walk to consult the OFT before any change was considered would certainly be a potential way of resolving this issue.
41. It was generally thought that investigating the possibility of more part-time BVC courses would be worthwhile⁵¹. The Inns of Court School of Law questioned whether there was demand for more part time places (especially given the expansion of recent years). Some contributions did not object to further part-time or online courses so long as overall number of students did not rise and that there was no dilution of standards. The Equality and Diversity Committee also emphasised that there should be careful thought given before embarking on an internet-based BVC and the way in which advocacy skills would be taught.
42. Representations generally thought that the entry standard of the BVC should be raised to a 2:1⁵². Guy Mansfield QC commented that: “During my time as vice chairman and then chairman of the Bar I became increasingly concerned at the relatively low minimum intellectual standard required to embark on the BVC”. This was a view that was widely shared among the contributors. The Inner Temple report stated that: “the time has come to recognise that those who do not have a good 2:1 are highly unlikely to obtain pupillage”. It was regularly stated that too many students with no prospect of pupillage continue to pass the course. The Chambers that responded made it clear that the chances of obtaining pupillage with a 2:2 are slim to none. Many of the responses therefore considered that the entry requirements for the BVC should be raised to a 2:1. This would ensure that the

⁵¹ See Interim Report, paragraph 24 (f).

⁵² See Interim Report, paragraph 24 (g).

BVC is reserved for those who have pupillage or a reasonable prospect of pupillage. 4 Pump Court commented in their representations that, given the financial sacrifice of the BVC, it made sense to separate the most promising candidates from the least promising before the BVC stage. Their report also went on to emphasise that: “the absence of an effective filter at the BVC stage imposes unfair burdens on pupillage selection”.

43. There was some concern that increasing the entry requirements from a 2:2 to a 2:1 might be crude, as an individual with a 2:2 may well be a capable barrister. The Crown Prosecution Service was keen to point out that increasing the degree threshold would not necessarily make for better advocates. Moreover, Gray’s Inn suggested that it also fails to distinguish between a 2:1 at a Russell Group university and a 2:1 at a lesser university. However, it was considered that some of these problems might be a price worth paying to prevent excessive numbers.
44. There was a great deal of concern expressed as to whether increasing the entry standards for the BVC would improve access. Views were extremely mixed on this issue. Gray’s Inn questioned paragraph 29 of the Interim Report where it is suggested that increasing the standard of the course could make it more difficult for those from disadvantaged backgrounds to embark on the BVC. However, the Equality and Diversity Committee considered that raising the threshold for entry to the BVC was likely to reduce access to the Bar rather than remove barriers to entry. In terms of empirical evidence, the Inns of Court School of Law argued that a move to increase entry requirements on the BVC to a 2:1 would disproportionately affect black and ethnic minority students. Their data suggested that 71% of black and ethnic minority students on the BVC obtained a 2:2 at university compared to only 42% of white students. The Bar Association for Commerce Finance and Industry suggested that a fairer way to determine entry might be by way of an entrance exam.
45. The possibility of a voluntary aptitude test was not widely endorsed⁵³. Gray’s Inn thought that the idea was a “non-starter”, of “no use to anyone”. Lincoln’s Inn thought that more details were required as to the meaning and utility of a voluntary aptitude test.
46. One of the other major issues raised (which the Working Party had not made proposals on, but was alluded to in Appendix 4⁵⁴) was the issue of the length of the BVC. Many responses commented that the BVC is excessively long with some suggesting that it could be reduced to 3 months. It was commented that there was little or no need to have any substantive law taught on the course. Some submissions feared that some BVC providers were filling the course with unnecessary components to justify higher fees (which have risen well above the rate of inflation).
47. 12 King’s Bench Walk noted that Oxford University had tendered to teach the BVC over a 12-week period and it is not known why they were refused. Wilberforce Chambers and the Employed Barristers’ Committee both supported the idea of

⁵³ See Interim Report, paragraph 24 (h).

⁵⁴ See Interim Report, Appendix 4, paragraph 10.

integrating the BVC more closely with pupillage, with shorter classroom-based vocational training (for example, 3 months), with day-release from pupillage. The Equality and Diversity Committee also supported this idea stating that it would entail significant cost savings and allow the BVC to be tailored to where the pupillage was being undertaken. Admittance to the BVC could still be open to those without pupillage and thought would need to be given as to how the pupil / non-pupil courses might interact.

48. The other major issue raised in submissions was that of finance for the BVC. Gray's Inn considered that it was a shortcoming of the Interim Report that it did not address the issue of finance more fully⁵⁵. There was strong resistance to any attempt to fund increased access to the BVC from the profession. It was often stated that any such attempt would simply reduce the number of funded pupillages and would thus be self-defeating. One submission also said that any attempt to impose a levy on the profession would also be strongly resented whilst the quality of the BVC remains so poor. Although many of the larger commercial sets were able to offer part of the pupillage award for the purpose of funding the BVC, Fountain Court Chambers noted that it would be doubtful "whether it is realistic to ask most Chambers to commit to pay in part or in whole for the funding of prospective pupils during the BVC year".
49. The Young Barrister's Committee thought that in considering the future of the BVC, lessons for structuring vocational training might be learnt from other jurisdictions, particularly the New York Bar.

Pupillage

50. The Interim Report provisionally made the following proposals:

Active measures should be taken to encourage employers to become approved pupil training organisations, and to offer employed pupillages

Subject to sensible rules, pupils should be permitted to earn money during pupillage.

The Bar Council should offer further training for all Chambers in fair pupil selection to ensure that the most able students are selected, irrespective of background.

The Working Party also intended to look at the following possibilities:

Requiring Chambers and pupillage training organisations to inform students of the outcome of their pupillage applications before the BVC providers require commitment to and payment for the BVC.

Part time pupillages.

Reviewing the rule against unpaid pupillages.

⁵⁵ A fact acknowledged by the Working Party in paragraph 32 of the Interim Report.

The Bar, or individual sets of Chambers, being required to offer specific numbers of paid pupillages.

51. The provisional proposal of the Working Party to take active measures to encourage employers to become approved pupil training organisations met with widespread approval⁵⁶. It was seen as part of the solution to the ‘bottleneck’ created by too few pupillages for the number of BVC graduates. As part of this proposal 4 Pump Court thought that there should be greater promotion of a career at the employed Bar as a genuine alternative to the self-employed Bar. The Inns were keen that any expansion in the training given by the employed Bar was properly monitored and regulated, particularly to ensure that there is adequate advocacy training is provided.
52. The Crown Prosecution Service and the Bar Standards Board were keen that there should be a relaxation of the rules for the employed Bar to enable them to offer more pupillages. The CPS stated that high-calibre solicitors, who are quite able to supervise pupillages at the employed Bar, should not have to go through a cumbersome process of applying to the Joint Regulations Committee for approval.
53. Although the proposal to permit (subject to sensible rules) pupils to earn money during pupillage was generally welcomed, it was often thought impractical in many Chambers⁵⁷. It was noted that there was already tremendous pressure on pupils to work unhealthy hours during pupillage and that undertaking other work would not be appropriate.
54. The provisional proposal in the Interim Report to offer training for all Chambers in fair pupil selection was widely supported but it was generally thought that such training should only be on a voluntary basis⁵⁸.
55. The possibility of Chambers informing students of the success or otherwise of pupillage applications before commitment to the BVC received a mixed response⁵⁹. It was suggested that forcing pupillage decisions before the BVC commences might well limit the flexibility of Chambers but that such an approach might be encouraged rather than imposed. Ian Mill QC of Blackstone Chambers (amongst others) thought that it might be more appropriate to defer payment of fees for the BVC until pupillage decisions are taken. Guy Mansfield QC considered that the issue might be linked to deferred call. He considered that to those not offered pupillage, particularly if pupillage offers were timed so as to be made prior to commitment to the BVC, deferral of call would send an “amber light”. Fountain Court Chambers also noted that any changes made which might involve more selection before final degree results are known are more likely to prejudice those from disadvantaged backgrounds.

⁵⁶ See Interim Report, paragraph 25 (a).

⁵⁷ See Interim Report, paragraph 25 (b).

⁵⁸ See Interim Report, paragraph 25 (c).

⁵⁹ See Interim Report, paragraph 25 (d).

Appendix 4

56. It was generally doubted whether many Chambers would be willing or able to accommodate part-time pupils⁶⁰. One set also suggested that it would be instructive to know whether solicitors allow their trainees to work on a part-time basis. The majority of responses thought that pupillage should not last less than 12 months. However, the College of Law argued that shorter pupillages ought to be considered: “Pupillage does not need to last for 12 months. If pupils are properly prepared by the BVC they can start on their feet earlier by a month or two”. Nevertheless, it would be fair to say that most representations did not consider pupils to be properly prepared by the BVC.
57. Many responses blamed the reduction in the number of pupillages on the introduction of the ban on unfunded pupillages. However, the possibility of reintroducing unfunded pupillages received a mixed response⁶¹. The Gray’s Inn report suggested that the reintroduction of some unfunded pupillages might be part of the solution to the mismatch between BVC graduates and pupillage places. However, Lincoln’s Inn argued that the rule against unpaid pupillages should not be relaxed. Concerns were raised that a return to unfunded pupillages would do little to improve access to the Bar for those from socially disadvantaged backgrounds. Indeed, some responses argued that the minimum level of funding for pupillage should be increased given the cost of living in London.
58. The possibility of Chambers being required to offer specific numbers of paid pupillages was, on the whole, robustly rejected⁶².
59. Other suggestions made for the pupillage stage included making it compulsory to give reasons for pupillage rejections and the establishing of mentor systems (where they do not exist) to guide pupils through pupillage to tenancy.

Miscellaneous issues

60. The Working Party also sought representations on other connected issues that may not have been covered within the provisional views of the Working Party but that are either mentioned or connected to issues raised in Appendix 4 of the Interim Report.
61. The retention of women at the Bar was raised by several contributors as a key issue in terms of access to the Bar. Joanne Wicks of Wilberforce Chambers noted that some of the best female applicants may be deterred from applying to the self-employed Bar if they feel their practice will disappear when maternity leave is taken. Other representations questioned whether any thought had been given to how Chambers might deal with a situation where a pupil fell pregnant.
62. A number of submissions were received on access to the Bar for people with disabilities. It was unanimously felt that special consideration must be given to the

⁶⁰ See Interim Report, paragraph 25(e).

⁶¹ See Interim Report, paragraph 25 (f).

⁶² See Interim Report, paragraph 25 (g).

Appendix 4

requirements of disabled people in terms of access to the Bar. Some contributors also thought that there ought to be an acknowledgment that it is more difficult for disabled person to gain the requisite qualifications and that when these qualifications are achieved they are often older than their peers. The Working Party was also invited to consider the full implications of the Disability Discrimination Act. The Equality and Diversity Committee suggested that specialist advice could be taken from disability charities in order to address all of these issues.

63. Gilead Cooper QC also noted that in improving access to the Bar, flexibility should be retained to ensure that mature students are not hindered from entering the profession.
64. In terms of the comments made by the Working Party in paragraph 26 of the Interim Report, Jonathan Gaunt QC noted that there is widespread scepticism at the Bar about the value of degrees from outside of the Russell Group and university degrees are the single biggest factor considered when selecting for pupillage. However, the general view was that Chambers are simply seeking the most outstanding candidates for pupillage. Moreover, the increase in competition for pupillage places has necessarily led to ever more qualified students seeking pupillage. The submissions from the University of Derby considered that: “It should be a matter of disciplinary action for Chambers to select directly or indirectly on the basis of social background or education”. However, this approach was not mirrored in any of the other representations. There was some concern as to that was meant by the term ‘positive action’ set out in Appendix 4 of the Interim Report⁶³. There was a strong suspicion that was referring to ‘positive discrimination’ and that if this were the case then it would be opposed.
65. Funding in the early years of practice was also dealt with in a number of the submissions. It was thought that guaranteed incomes would present real problems for some Chambers and so it may be preferable to consider a compulsory reduction in rent during the first years of practice instead.
66. The Equality and Diversity Committee argued that the Code of Conduct should be amended so that it is clear that it would be professional misconduct to discriminate against pupils or tenants on the grounds of their social or economic backgrounds. 23 Essex Street stated in their representations that there should be more clarity as to the meaning of ‘socially and economically disadvantaged’ groups and the Inns of Court School of Law thought that further research should be commissioned into the progress of socially disadvantaged students through their careers at the Bar.
67. It was generally thought that further data would be useful in making informed decisions about the ways in which access might be improved⁶⁴.
68. Finally, Middle Temple considered that the Working Party should attempt to produce a general statement of the qualities required of a successful practitioner.

⁶³ Interim Report, Appendix 4, paragraph 28.

⁶⁴ Interim Report, Appendix 4, paragraphs 30-40.

AN OVERVIEW OF PREVIOUS WORKING PARTY REPORTS

Lisa Wilson

1. A working party has been established to develop proposals for:
 - (a) improving the provision of information, funding and the prospects of success for those contemplating training for or entering the profession;
 - (b) reducing any barriers to such training or entry for students from minority groups or for students who are financially disadvantaged.
2. Successive committees have reviewed the issues facing those wishing to practice at the Bar. I have been asked to produce an audit of the reports made by previous working parties concerning access to the Bar and the financial support available for entrants to the Bar.
3. This paper summarises the recommendations made by previous working parties, and where possible it sets out the reasons given for rejecting certain proposals. **Tables 1 and 2** provide a brief summary of the various proposals made in each report. A summary of the arguments for and against the main proposals is contained in **Table 3**.
4. In preparing this document, I have had access to the following papers:
 - i) Report of the Bar Entry and Training Working Party, 1991 (**Taylor**)
 - ii) Report of the Working Party on Financing Entry to the Bar, July 1998 (**Goldsmith**)
 - iii) Financing Entry to the Bar, March 1999 (**Tuckey**)
 - iv) Committee to Review Financial Support for Entrants to the Bar, July 2002 (**Mountfield**)
 - v) Response of the Education and Training Committee, October 2002 (**Mountfield**)
 - vi) Bar Council Resolution, November 2002 (**Mountfield**)
 - vii) Taskforce on Funding Entry to the Bar, July 2002 (**Calvert-Smith**)
 - viii) First Draft of the Report of the Voluntary Scheme Appeals Committee, April 2005
 - ix) Arrangements for collecting contributions, June 2005 (**Southern**).
5. The reports recognise that entry to the Bar has been adversely affected by the following:
 - (i) Imposition of tuition fees
 - (ii) Removal of maintenance grants
 - (iii) Withdrawal of LEA support for the BVC year
 - (iv) Increasing fees for BVC courses
 - (v) The Bar's competitors increasingly offer generous packages of support and assured employment
 - (vi) The expansion of rights of audience.

Report of the Bar Entry and Training Working Party, 1991 (Taylor)

6. The primary focus of the Taylor report was admission to, and the provision of, vocational training. The key objective of vocational training was felt to be to produce sufficient people of “appropriate calibre” to sustain full careers as barristers.
7. Key recommendations:
 - (a) Entry to vocational training for the Bar should be led by the requirement for trained barristers
 - (b) There should be a limit on the number of candidates admitted to vocational training
 - (c) A selection scheme is necessary at the vocational training stage:
 - (i) Outstanding candidates should be admitted automatically
 - (ii) Candidates who are clearly unsuitable should be rejected automatically, but with a right of appeal
 - (iii) Candidates falling between these categories should be interviewed
 - (d) To be deemed a barrister, a person must have
 - (i) Achieved minimum academic standards
 - (ii) Passed vocational training
 - (iii) Completed pupillage
 - (iv) Been called to the bar
 - (e) Equality of information and opportunity should be available in good time to all candidates who seek to enter the vocational training course.
8. The report was critical of the ‘Open Door’ policy, for the following reasons:
 - (a) Valuable educational and financial resources will be wasted in training members who are unlikely to succeed
 - (b) The weaker qualifiers will suffer disappointment
 - (c) The public will suffer through the dilution of legal representation.

Report of the Working Party on Financing Entry to the Bar, July 1998 (Goldsmith)

9. The primary focus of the Goldsmith report was the increasing cost of entry to the Bar and the issues to which that gave rise. The primary objective of the Bar was felt to be to achieve excellence:

“The business of the Bar is the business of justice... For the Bar to survive, it will need to continue to demonstrate not merely great skill in advocacy, but a level of obvious and universally recognised excellence”

10. The report identified the cost of qualifying as the primary threat to the Bar. It recognised that the vocational training year creates the greatest financial hardship for potential barristers. It went on to consider a variety of options for improving funding for vocational training.

11. Key recommendations:

(a) Funding for the BVC year: Funding should be provided for 450-500 students for the BVC year

(b) Government Funding: Additional funding for vocational training might be available from the government. The Bar Council and BVC providers should press for action in 3 areas:

(i) *Integrated Course*

BVC providers should be encouraged to pursue the idea of an integrated law degree/ BVC (Northumbria University already offer this)

The Bar Council should support the efforts of institutions to obtain appropriate approval for such courses

(ii) *Recognition of the problem in planning for reform*

The Bar Council should have particular regard for the effect on young barristers and trainees in its representations on proposed government changes

The Bar Council should treat the effect on potential new barristers as a priority issue in drawing up its own proposals for change

(iii) *Loan scheme administration*

The profession should make use of loan schemes

The Inns' finances could be made to go further if instead of being paid outright as scholarships, it was used to pay the interest on loans to cover the BVC year

The profession should enter into discussion with the DFEE (as it then was) to consider the possibility of loan schemes being the subject of

arrangements for repayment together with, or by the same mechanism, of student loans

- (c) Chambers: Welcome the initiative of some sets of Chambers in advancing part of the pupillage awards during the BVC year. This is a practice which should be more widespread
 - (d) Chambers: Financing for the pupillage year should be increased to 500 pupils, at £10,000 minimum.
 - (e) Annual Subscriptions (Inns): The Inns should introduce a modest annual membership fee for their members, for the sole purpose of bolstering scholarship funds.
 - (f) Millennium Appeal: No objection to a concerted appeal to generate funds, but not confident that the appeal would succeed.
 - (g) Award Criteria: The Inns should each review their policies and criteria to ensure that award criteria have a greater degree of reference to need rather than solely merit
 - (h) Recruitment Timetable: Pupillage recruitment timetable should be moved forward to a date prior to that which students have to commit to the BVC.
12. The Report rejected the following suggestions:
- (a) Financial assistance for all BVC students: Unrealistic
 - (b) Bar Levy: Do not consider it to be a workable option, for the following reasons:
 - (i) The Bar Council would not have power to enforce it
 - (ii) The scheme faces much opposition
 - (c) “Training Fine” for those taking silk or elected to the Bench: Impractical.

Financing Entry to the Bar, March 1999 (Tuckey)

13. The focus of the Tuckey report was to examine the implications of the Goldsmith recommendations for the Inns of Court.
14. Key recommendations:
 - (a) Limit the total intake of each year's BVC to the number which the Bar considers it will have room for
 - (b) The Bar should fully fund students through training and pupillage
 - (c) Training levy, deductible as a business expense and collected with barrister's tax, would cover the cost of (b).
15. The report recognised that 14(a) required the introduction of a statutory power to limit student numbers, to which the government would also have to agree.
16. The Report rejected the following proposals:
 - (a) BVC Funding: The Goldsmith proposal that funding should be provided for 450-500 students for BVC year was felt to be objectionable on the basis that it substantially closes the open door policy
 - (b) Increased Scholarships: The report concluded that there was little scope for an increase in scholarships and awards by the Inns
 - (c) Annual Subscription: Unacceptable:
 - (i) It could not be made compulsory
 - (ii) Only a few hundred members of each Inn use the facilities
 - (iii) The library is used most heavily by students
 - (iv) Members provide assistance voluntarily
 - (v) Proposal would be met with considerable resistance
 - (vi) Chambers who are tenants of the Inn pay market rents
 - (vii) Administrative costs
 - (d) Millennium appeal: Untenable; 2 Inns already had appeals, and all of the Inns were doing what they could to raise money
 - (e) "Fines": This report rejected the idea of training fines for those taking silk or members elected to the Bench, on the basis that:
 - (i) This proposal is unfair

- (ii) Inns already impose a substantial charge upon election to the Bench
- (iii) It would not amount to a significant source of money
- (f) Loan scheme: Undesirable:
 - (i) Undesirable to increase student debt
 - (ii) Inns might be criticised if seen to be encouraging students to participate in such a scheme
 - (iii) More attractive to donors to offer outright awards
 - (iv) Unlikely to make any significant difference
- (g) Award Criteria: Unnecessary; each Inn already strikes a balance between need and merit when awarding scholarships
- (h) Pupillage: This report rejected the notion that the Bar should accept responsibility for ensuring that all those who successfully complete the BVC are enabled to secure pupillage, on the basis that it has large cost implications and is unrealistic.

Committee to Review Financial Support for Entrants to the Bar, July 2002 (Mountfield)

17. Key recommendations:

- (a) Bar Council Scheme – Bar Levy: Compulsory levy on barristers in private practice, in order to fund 400 scholarships of £8000 each, to cover the BVC
 - (i) Financed by an extension of annual fees for practising certificates, under s.46 of the Access to Justice Act 1999
 - (ii) Fee system should be based on a rule requiring declaration of gross income, made in confidence for this purpose alone (either to a trusted intermediary or to Chambers)
 - (iii) Main contribution should be made by barristers (in independent practice) with a gross income in excess of £100,000
 - (iv) Possible to make a small charge on those earning between £50,000 - £100,000, although this would not raise a significant amount
 - (v) In each case, the charge would be deductible for purposes of tax and National Insurance.
- (b) Selection Process: On the lines of the former ICSL procedure
- (c) Timing of Selection: Inns, the Bar Council and Chambers should be encouraged to make selection decisions early in the third year of the degree course
- (d) Inns: Should be invited to use a single point of entry for students in order to simplify the process.

18. The Report rejected the following suggestions:

- (a) Government Support: No significant support is likely. There was nothing to suggest that government would agree to BVC providers adopting an integrated course, and increased public spending is unlikely
- (b) Annual Subscriptions (Inns): Not practicable for the Inns to charge members annual subscriptions. It was further contended that the Inns simply do not have further funds with which to increase their support for BVC students
- (c) Chambers: Not practicable to require all Chambers to carry the BVC costs, since some areas of the Bar (especially Crime) would find this a disproportionately heavy burden
- (d) Fee increases based on length of call: This could place an excessive burden on experienced barristers operating in legal aid and other less prosperous sets

- (e) Interest-relief loan schemes: Rejected on the basis that:
 - (i) At best, it would be only a modest improvement on the present position
 - (ii) Banks' own lending arrangements normally offer favourable terms
- (f) Means Testing: The Bar Council Scheme should not operate through means-testing, for the following reasons:
 - (i) It would do nothing to meet the competition from solicitors (solicitors' firms do not means-test)
 - (ii) As the scheme would be statute-based, it would need to be based solely on objective criteria (otherwise there is a risk of a judicial review challenge)
 - (iii) For even relatively comfortable middle-class parents, the cost of the Bar is a formidable sum. If the scheme is to avoid excluding children of even many middle-class parents who would thereby be unable to regard the Bar as a possible career, the cut-off point would have to be set so high that the saving would be small
 - (iv) The issue of part-time earnings would need to be addressed: would the Bar Council wish to encourage, or to discourage, students from undertaking part-time work?
- (g) Selection Criteria-Pupillage: Making Bar Council support contingent on Chambers' pupillage offers is not a viable alternative:
 - (i) It would put under the spotlight Chambers' selection procedures
 - (ii) Discrimination problems might persist
 - (iii) Chambers have disparate selection methods
 - (iv) Many Chambers prefer to delay pupillage offers
- (h) Selection Criteria-Inns: The Bar Council should not make its awards to candidates based on selection by the Inns, because:
 - (i) The Inns' procedures would have to be amended so as to meet the statutory requirements of objectivity
 - (ii) It may not be appropriate for a scheme financed under the Bar Council's statutory powers to be delegated in this way.

Response of the Bar Council's Education and Training Committee, October 2002 (Mountfield)

19. Key recommendations:

- (a) Redirect annual subvention: The Inns' subvention to the Bar Council should be abolished immediately. The Bar Council should enter into a memorandum of understanding with the Inns to redirect the annual subvention, so that it could be used to supplement awards towards the BVC year
- (b) Increase in Bar Council subscriptions: Required to cover the costs in (a)
- (c) Increase in funding from Chambers and the Inns: Should be encouraged to fund the BVC year
- (d) Criteria: Awards should be means and merit based.

20. The Report rejected the following proposal:

- (a) Establishing a new system for the award of funding directly through the Bar Council, on the basis that the administrative cost would be approximately £500,000.

Bar Council Resolution, November 2002 (Mountfield)

21. The Bar Council rejected the Mountfield proposal to introduce a compulsory Bar levy, on the basis that it would not be acceptable to the Bar as a whole.

Taskforce on Funding Entry to the Bar, July 2002 (Calvert-Smith)

22. Following the controversial Mountfield Report, and the widespread resistance that came with it, the Calvert-Smith taskforce was commissioned to look at the issue in a calm and objective way. Unsurprisingly, the report does not propose the Bar levy be adopted, but instead recommends such a scheme should be voluntary.
23. Key recommendations:
- (a) Voluntary Scheme: The Bar Council should establish a voluntary scheme to enable members of the Bar to provide additional funds for scholarships
 - (b) Criteria: Additional funds should be distributed on the basis of merit and means; i.e. they should only be awarded to candidates who have merits but lack means
 - (c) Banding: The scheme should involve a form of banding, based on the varying levels of the existing subscriptions. This should be a recommended level of contribution and individuals could vary the amount, upwards or downwards, as they wished
 - (d) Statistical data: The Bar Council should collect information on those entering the various stages of training for the Bar, and keep under review patterns of entry. If any adverse trend were to be found, it would need to be investigated. Professional advice as to how best to undertake this research should be sought
 - (e) Inns: The Inns should adopt a common approach to the extent and way in which student means are considered when making awards
 - (f) Co-ordination: A body should be set up to work with the Inns and circuits to ensure more efficient focus of resources devoted to recruitment to the Bar
 - (g) Image: The body mentioned in (f) should aim to promote a positive image of the Bar
 - (h) Timetable: Chambers should adopt a pupillage recruitment timetable that enables those who have not commenced the BVC to know the outcome of interviews before commencement
 - (i) Chambers: Chambers should offer financial support for the BVC year, and the fact they do so should be widely publicised (e.g. through Olpas)
 - (j) BVC: BVC providers should review their policies in respect of the payment of fees and deposits, to ensure they do not disadvantage students who are unsuccessful in securing pupillage
 - (i) BVC providers should charge the same deposit
 - (ii) The deposit should be as low as possible

- (iii) Deposits should be refundable for those who have applied for but not obtained offers of pupillage
 - (iv) BVC providers should be encouraged to postpone the payment of half the fees of the course until after the summer season results are known
 - (k) E&T Committee: Should undertake a detailed review of the duration, content, level and delivery of the BVC (see paragraph 25 below)
 - (l) Bar Council: Should use its influence to keep BVC fees to a minimum
 - (m) Subvention: The Bar Council may consider consulting the Bar on redirecting the Inns' subvention to the Bar Council.
24. The Report rejected the following proposals:
- (a) Compulsory Bar Levy: Unjustifiable
 - (b) Disclosure: A voluntary scheme could not, and should not, involve disclosure of barristers' earnings.
25. Following the recommendation in paragraph 23 (k), the **Bell** Working Party was established to investigate the issues surrounding the BVC. The Bar Council's Education and Training Committee further launched a Consultation Paper: 'The Vocational Stage of Training for the Bar' (December 2005). The committee undertook a very detailed review of many aspects of the BVC, and made clear that it was keen to receive the views of the Bar before making any formal recommendations. The consultation closed in March 2006. In the light of the responses, the BSB's BVC sub-committee has instigated a review of the BVC to be completed by summer 2007. It is anticipated that the new BVC framework will be completed by summer 2008 and all BVC courses will be revised by summer 2009. The Bar Council's Training for the Bar Committee (TfBC) is also reviewing the BVC in the light of the responses to the consultation paper and comments by Committee members. Richard Wilson QC is preparing a paper setting out the views of the TfBC which will be put to the BSB in due course.

*First Draft of the Report of the Voluntary Scheme Appeals Committee, April 2005
(Kennedy)*

26. The Kennedy Committee was set up on the recommendation of the Voluntary Scheme Working Party (Purchas). It was set up to consider and take forward the recommendation made by Calvert-Smith that there should be a Voluntary Scheme to raise money for additional BVC scholarships.
27. Key recommendations:
 - (a) The recommendation made by Calvert-Smith for a Voluntary Scheme should be adopted
 - (b) Donations should be channelled through the existing Bar Council Scholarship Trust (thereby qualifying for Gift Aid)
 - (c) Funds should be distributed through the existing Inns mechanisms
 - (d) A provision for donations on a voluntary basis should be included in the request for payment for the annual practising certificate
 - (e) The initial target should be £500,000
 - (f) The scheme should be launched at the Bar Conference
 - (g) Promotional material is needed
 - (h) The scheme would benefit from having a small number of patrons.

Appeal Committee, Arrangements for collecting contributions, June 2005 (Southern)

28. Following the recommendation of the Kennedy report to take forward the Calvert-Smith proposals, the appeal committee was set up, with the Treasurer of the Bar Council as its head, to consider the workings of the voluntary scheme. The focus of the Southern report was to consider how best to maximise the amount which can be collected on a voluntary basis from members of the Bar to assist funding of students in the BVC year.
29. Key recommendations:
 - (a) Appeal for voluntary donations
 - (b) Donations should be sought in specified graduated amounts according to seniority
 - (c) Donations should be made with gift aid declarations to the Bar Council Scholarship Trust
 - (d) The money raised should be passed on to the Inns to distribute through their established arrangements for scholarships
 - (e) The appeal should take place in June.
30. The report concluded that an 'opt-out' arrangement is not possible, for the following reasons:
 - (a) It could only operate where payment is by direct debit (15% of subscribers)
 - (b) It would be a misuse of the direct debit
 - (c) The contributor would be required to take the active step of making a gift aid declaration in respect of a specific payment
31. The report concluded that the appeal should be made in June, rather than December/January because:
 - (a) There is no need to link the appeal with the December/ January payments
 - (b) Split payments may cause confusion and complexity
 - (c) Extra administration at the busiest time of year would be avoided
 - (d) It would be easier to tie up the gift aid declarations with the payments to which they relate
 - (e) The appeal would have greater prominence and transparency
 - (f) Additional work could be avoided without extra cost

- (g) It would be more productive.

Table 1. Summary of Key Recommendations

Taylor	Entry to vocational training for the Bar should be led by the requirement for trained barristers, and there should be a limit on the number of candidates admitted to vocational training
Goldsmith	Funding should be provided for 450-500 students for the BVC year
Tuckey	Limit the total intake of BVC students, and Bar to fully fund students through BVC and pupillage
Mountfield	Compulsory levy on barristers in private practice, with a gross income in excess of £100,000, in order to fund 400 scholarships of £8000 each, to cover the BVC
Education & Training Committee	Increased subscriptions Redirect subvention
Bar Council	Outright rejection of a compulsory Bar levy
Calvert-Smith	There should be a voluntary scheme to raise funds for additional BVC scholarships for those with merit and need
Kennedy	Voluntary scheme should be adopted
Southern	Voluntary scheme should be implemented and donations should be sought in specified graduated amounts

Table 2. Summary of Proposals

	Goldsmith	Tuckey	Mountfield	E&T C'ee	Bar Council	Calvert- Smith	Kennedy	Southern	Adopted?
Annual Subscription (Inns)	√	x	x						No
Bar Levy	x		√		x	x			No
Bar Council: Increased subscriptions				√					No
Bar Council: Collect statistical data						√			Yes
BVC review		√				√			Yes
Chambers: Pupillage award during BVC year	√					√			Many Chambers offer this
Chambers: Increased financing for the pupillage year	√		x						Minimum: £10,000 Some Chambers offer more
Integrated Course	√		x						No
Inns: Single point of entry			√			√			No
Loan Scheme	√	x	x						No
Millennium Appeal	√	x							No
Recognising the problem in planning for reform	√								
Redirect subvention				√		?			No
Scholarships: greater focus on need	√	x		√		√			Inns strike a balance
Training Levy		√							
“Training Fine”: Silks/ elected benchers	x	x							
Timetable	√		√			√			Some Chambers offer pupillage early
Voluntary scheme						√	√	√	

Key

√

Recommended

?

Ought to be considered

X

Rejected

Blank

Not considered

N/B. I have not included Taylor (1991) in the table, since it is of historical interest only

Table 3. Arguments For and Against Main Proposals

	Arguments For	Arguments Against
Annual Subscription (Inns)	<p>(1) Could produce a very significant increase in funds available</p> <p>(2) The Inns are one of the only clubs without an annual membership fee</p> <p>(3) Other than the entrance and call fee, members do not pay any charges for use of the facilities</p> <p>(4) The fees have not changed since 1977</p> <p>(5) Payment for meals is normal in other clubs who also charge annual membership fees</p> <p>(6) Many Chambers are outside the Inns, and so do not pay rent</p>	<p>(1) Barristers do pay other monies to the Inn (catering, rent, etc)</p> <p>(2) Those based away from London receive little benefit from the Inns' facilities</p> <p>(3) Library used mostly by students</p> <p>(4) Members provide assistance voluntarily</p> <p>(5) Would be met with considerable resistance</p> <p>(6) Enforcement is difficult</p>
Bar Levy	<p>(1) Would produce a very significant increase in funds available</p>	<p>(1) Heavily opposed</p>
Bar Council: Increased Subscriptions	<p>(1) Could produce a significant increase in funds available</p>	<p>(1) May be met with considerable resistance</p>
Chambers: Pupillage award during BVC year	<p>(1) Improve diversity</p>	<p>(1) Some sets (especially Crime) prefer to wait to judge how applicants perform on BVC</p>
Chambers: Increased financing for the pupillage year	<p>(1) Could produce a very significant increase in funds available</p> <p>(2) Improve diversity</p> <p>(3) Minimise the risk of students leaving the Bar for solicitors firms, etc</p>	<p>(1) Some Chambers (especially Crime and Family) cannot afford it</p>
“Training Fine”: Silks/ elected benchers	<p>(1) Could increase funds by targeting those who can afford to pay</p>	<p>(1) Not practical</p> <p>(2) Members already pay a fee on these occasions</p> <p>(3) Moral encouragement may be all that is needed</p>
Integrated Course	<p>(1) Cost-saving</p> <p>(2) Already offered (Northumbria)</p>	<p>(1) Government approval unlikely</p> <p>(2) Only a fraction of universities who provide law degrees are validated providers of the BVC</p>
Loan Scheme	<p>(1) Could increase the availability of assistance without increasing the overall cost</p> <p>(2) Practical problem could be overcome through use of the Student Loans Company</p>	<p>(1) Administration of debt collection is problematic</p> <p>(2) Undesirable to be seen to encourage students to take out loans</p> <p>(3) Donors likely to prefer donating for an outright award</p>
Millennium Appeal	<p>(1) Could raise a considerable amount</p>	<p>(1) Unlikely to succeed</p> <p>(2) Inns already do all they can to raise funds</p>
Means Tested Scheme	<p>(1) Consistent with the ‘social obligation’ case for the Bar to assist those from less advantaged</p>	<p>(1) Would not address the problem of competition from solicitors’ firms</p>

	backgrounds	<p>(2) If scheme is statutory based, it would need to be based on wholly objective criteria (otherwise there is a risk of judicial review)</p> <p>(3) Not clear whose means should be tested - parents or students?</p> <p>(4) To avoid leaving out of benefit a large proportion of potential students (those from the middle classes for whom the Bar fees may be a formidable sum), the threshold must be set at a high level of income</p> <p>(5) The saving from excluding those with parental income above such a level would be small</p>
Redirect Subvention	<p>(1) It is usual for the members of a self-regulating profession to bear the costs of regulating that profession</p> <p>(2) It would increase accountability if Bar Council subscriptions more closely reflected the true cost of running the Bar Council</p> <p>(3) The Inns' funds are to be used for the general benefit of the profession as a whole. The provision of scholarships encourage this</p> <p>(4) At present, money which could be used to increase scholarships is being used to subsidise the Bar Council</p> <p>(5) It is more appropriate to use the Inns' resources to target the most able and deserving students rather than to contribute to general costs incurred in regulating education & training for all potential recruits</p>	<p>(1) The Inns share with the governance of the profession as a whole, so it is appropriate they share the costs involved</p> <p>(2) The Inns' funds can properly be applied to all the legitimate purposes of the profession as a whole</p> <p>(3) A large percentage of the costs of the Bar Council are spent on regulation and discipline; historically a function of the Inns, and in which the Inns remain involved</p> <p>(4) The subvention is used for the BVC, CPD, law degree reviews, monitoring, promotion, etc. It is appropriate the Inns fund this</p>
Scholarships: Greater focus on need	(1) Those who need the most help would receive it	<p>(1) Need for objectivity</p> <p>(2) Merit just as important</p>
Training Levy	(1) Could produce a significant increase in funds available	
Timetable	(1) Reduce risk – students would know their position before embarking on an expensive course	(1) Some sets (especially Crime) prefer to wait to judge how applicants perform on BVC
Voluntary Scheme	<p>(1) Could produce a very significant increase in funds available</p> <p>(2) Would not be met with the same resistance as a compulsory levy</p>	(1) Unclear how many members would contribute

ISSUES BEING CONSIDERED BY OTHER RELEVANT BAR COUNCIL COMMITTEES AND GROUPS

SCHOOLS AND UNIVERSITIES

1. Training for the Bar Committee's Recruitment and Entry Sub-Committee
2. Placements Working Party (part of above)

BVC

1. Training for the Bar Committee's BVC Working Party
2. Equality and Diversity Committee (monitoring information and diversity content of BVC)
3. BSB BVC Sub-Committee

PUPILLAGE

1. Training for the Bar Committee's Pupillage Working Party
2. Equality and Diversity Committee (monitoring data and guidance on recruitment and selection)
3. OLPAS Working Party (part of the Recruitment and Entry Sub-Committee)

FUNDING

1. Legal Services Committee's Funding Working Party
2. Training for the Bar Committee's Pupillage Working Party
3. Training for the Bar Committee's Recruitment and Entry Sub-Committee (information provision)

RETENTION STAGE

1. Equality and Diversity Committee (exit survey, pilot returners course and aspirations survey for barristers of 5,6 & 7 years call)

DATA FOR FUTURE STATISTICAL ANALYSIS OF ENTRY TO THE BAR

Professor Martin Chalkley

Introduction

1. This appendix is concerned with reviewing available data and examining the case for establishing a data resource in order to better inform future policy in respect of entry to the Bar.
2. If the Bar is to continue to develop an active approach to (i) monitoring itself as a profession, (ii) ensuring that entry to the profession is fair and open and (iii) adopting policies in response to i. and ii. then it needs to establish a resource that is based upon *detailed information concerning the background and progress of entrants* henceforth referred to as *Individual-Level data*
3. The Bar as a profession would benefit greatly from having access to an adequate *evidence base*. Whilst at present there are a number of sources of data that inform a discussion of the process of entry to the Bar, these are not coordinated and none presents information on an individual basis.
4. It is demonstrated in this appendix that the currently available *aggregate* data do not constitute an adequate evidence base, but that an adequate evidence base can be constructed at a reasonable cost.
5. An earlier paper, A Framework for Statistical Analysis of Entry to the Bar, set out how, in general, data can be used to inform the formulation of policies that are intended, for example, to improve the prospects of socio-economically disadvantaged students for entry to the Bar. For convenience this previous paper is henceforth referred to as “the Framework Paper”. This appendix continues to use the conceptual basis that is set out in the Framework Paper which should be referred to regarding details of notation.
6. In the Framework Paper, it was established that existing data can provide information on the ‘average’ prospects of success for particular groups of entrants. The paper included recommendations that: “A suggested next task is to interrogate data source further with a view to determining transition probabilities for specific groups in the population.”
7. Having considered the available data further I am of the view that further data collection is required in order for reliable conclusions to be drawn.
8. Whereas existing data, as set out in the Framework Paper, do provide population averages for some transition probabilities these are inadequate for the tasks of analysis and policy formulation.
9. A key part of this appendix (Section 3) is concerned with articulating why an approach based on population averages is misleading and risks the prospect of formulating inappropriate or counter-productive interventions.

10. Sources of available data are reviewed in Section 2, whilst Section 4 contains consideration of how existing data sources might be used to construct an individual-level database. Issues of confidentiality are also briefly discussed in Section 4.

Overview of Data

The Nature of Data - Individuals and Averages

11. In the Framework Paper the process of entry to the Bar is considered as a series of transitions. Using that approach it is possible to formulate questions of whether particular types of individuals suffer discrimination or disadvantage in terms of whether those individuals have a lower chance of success in making a given transition.
12. A key phrase --- other things equal --- naturally occurs in seeking to make any inference regarding the impact upon an individual of their ethnicity, gender or socio-economic grouping.
13. In the usually accepted sense a *bias* exists when an individual faces a lower chance of success on account of some characteristic taking account of all other factors i.e. other things equal.
14. This suggests that it is never going to be satisfactory to observe only whether someone is from a particular socio-economic background in order to assess whether they are subject to bias because it is necessary to know their other characteristics in order to be able to isolate any impact of their background on their chances of success. Therefore, detailed information on individuals is required.
15. There are a number of occasions when detailed and valuable information concerning entrants to the Bar is recorded. These give rise to individual-level data of precisely the kind that are considered in Section 3 of this appendix to be necessary to making reliable judgements regarding the operation of the entry process to the Bar.
16. However, those who collect these individual level data do so for particular purposes and only report or publish summary statistics -- usually averages of particular characteristics. The key point to note is that individual-level data exist but are not easily accessible.
17. Provided that individual level data from one source contains sufficient individual identification it is possible to match those data with data from other sources (providing that the other source also records identifying features). The matching of data has been a particular growth area in the analysis of health care systems.
18. The technology of data matching and the safeguards of confidentiality that have been developed elsewhere provide the Bar with the tools necessary to coordinate individual-level data from several sources. The key points to note are that coordinating across data sources provides a very rich resource for analysis --- the whole is greater than the sum of the parts --- and that confidentiality and security issues have already been addressed in a context where there is great sensitivity to these concerns.

Appendix 7

19. For the reasons set out in the Framework Paper, this appendix will be limited to a consideration to the BVC and pupillage stages of entry to the Bar as these are the most amenable to statistical analysis using readily available data.
20. In the first instance the most obvious sources of individual level data are the BVC providers, the Bar Council and Bar Mutual.

BVC Providers

21. The annual monitoring reports of BVC providers contain summary statistics on: gender, age, disability, existing educational qualifications, ethnic origin, place of origin and BVC results.
22. These reports are produced by aggregating individual level data so that each of these data items should be stored on student data systems for each individual student --- i.e. on an individual-level basis.
23. Additional information is almost invariably stored but this may vary from provider to provider. Thus, the BVC providers constitute a potentially excellent source of individual-level data. It is reasonable to assume that modern student records systems will make these data, together with identifiers of the individual students, readily accessible.
24. Provided that confidentiality and data security concerns can be addressed these data could be accessible to the Bar to facilitate detailed analysis.

Bar Council

25. The Bar Council maintains individual-level data for each barrister including year of call, inn of court, Chambers, (where applicable) employer's details, qualifications, practising areas, gender, ethnicity and nationality. These data have individual identifiers (name and date of birth) to permit matching with other data sources.

Bar Mutual

26. Bar Mutual requires each practising barrister to declare both their annual earnings and their area of practise. These are individual level data and of necessity also have individual identifiers. They could thus be matched to data from other sources.

Why Individual-Level Data are Needed

27. In the Introduction it was suggested that inferences based on comparing population average success (or failure) rates are unreliable and that individual-level data are required.

28. This issue is fundamental to the recommendations that are made in this appendix concerning investing in a data resource for the Bar and this section sets out in more detail the basis of the problem with aggregate data.
29. It is difficult to articulate the issue in non-technical language and, therefore, an example is used to illustrate it.
30. Since the required data are not as yet available I *construct* a simplified and hypothetical data set with the key characteristic of containing individual-level data on a group of individuals about whom it is desired to know whether the entry process to the Bar is favouring or disadvantaging some group.
31. It is vitally important in what follows to recognise that these are not real data. They are constructed so as to illustrate the central point that individual-level data are required in order to draw reliable conclusions.

A Constructed Data Set

32. The constructed data assume that there are observations on only a few characteristics of each of a number of entrants to the BVC and that in addition it is known whether the given individual achieved distinction on the BVC and subsequently goes on to successfully achieve a pupillage.
33. Such data could realistically be relatively easily obtained if the recommendations of this chapter are accepted.
34. For the purposes of illustration the constructed data contains only the following information on fictional individuals: their age, whether the individual achieved a first class degree or not, whether they are from an ethnic minority, whether they are from a socio-economically disadvantaged background, whether they achieved a distinction on the BVC course and whether they went on to obtain a pupillage.
35. A simple mathematical model was used to generate the data. In the model an individual is chosen to receive a first class degree at random. This can be viewed as an assumption that 'ability' is determined without regard to age, ethnic or socio-economic status.
36. Age is similarly determined by chance.
37. The model then randomly assigns individuals to a given ethnic origin and socio-economic status but does so such that these characteristics are correlated with the individual's age.
38. Finally the individual's achievement on BVC and their attainment of a pupillage are determined partly by chance (luck) and partly by their educational background and age.
39. The model thus defines a 'truth' regarding how this fictional entry process works and this truth can be compared with the inferences that can be made using either population average or individual-level data.

40. The constructed data can best be understood by considering a small extract. This extract is indicative of the form that individual-level data take and thus acts as an indication of what a real data source will look like if the Bar decides to invest in its creation.

TABLE 1: An Extract of the Constructed Data Set

Individual Identifier	Education	Socio-Economic Status	Ethnicity	Age	BVC Result	Pupillage
A106	0	1	1	23	0	0
A107	0	0	1	22	0	1
B002	1	0	0	23	1	0

41. In the table:
- (1) a 1 in the Education column indicates that the individual achieved First Class Honours (a 0 indicates any other degree class),
 - (2) a 1 in the Socio-Economic Status column indicates that the individual is from a high socio-economic status background (a 0 indicates that they are from a low socio-economic status background) ,
 - (3) a 1 in the Ethnicity Column indicates that the individual is from the majority ethnic group (a 0 indicates ethnic minority),
 - (4) a 1 in the BVC Result column indicates a distinction on the BVC (a 0 indicates a pass) and
 - (5) a 1 in the Pupillage column indicates that the individual obtained a pupillage (a 0 that they were unsuccessful or pursued an alternative career path).
42. The first column contains an individual identifier in coded form. In real data a coding would be used to ensure that it were never possible to identify a specific person from the data. This issue is considered further in Section 4 of this Appendix.
43. The constructed data can be summarised in terms of population averages. For the purpose of this example 2694 rows of data were generated and the averages (means) and spread (standard deviations) were as follows:

TABLE 2: Summary Statistics of the Constructed Data Set

	Education	Socio-Economic Status	Ethnicity	Age	BVC Result	Pupillage
Mean	0.104	0.732	0.63	24.02	0.31	0.37
Standard Deviation	0.305	0.444	0.484	5.65	0.465	0.483

44. For all except Age, these figures can be converted to percentages so that in the constructed data 10.4% of the sample have a First Class degree, 73.2% are from a high socio-economic group and 37% go on to achieve a pupillage. These percentages can be changed at will by simply altering parameters of the mathematical model that generates the data.

Analysis Based on Aggregates

45. Tables of the form of Table 2 above encapsulate in a very simple way the data resource that is currently available to the Bar. In particular, if the Pupillage column is ignored, then the BVC providers each produce many tables in a form closely related to Table 2.
46. These tables appear to offer the opportunity of drawing inferences regarding the process of entry to the Bar because if, for example 26.8% of entrants are from a low socio-economic group but only 5% of those obtaining pupillage are from such a group there would appear to be a bias against those individuals.
47. This kind of comparison is commonplace but it is deeply flawed. In order to see this we can carry out such an 'analysis' on the constructed data set.

TABLE 3: Analysis based on averages

	Low Socio-Economic Status	Ethnic Minority
As a Percentage in the Whole Sample of 'Entrants'	27%	37%
As a Percentage of those with BVC Distinction	16%	52%
As a Percentage of those Obtaining Pupillage	22%	41%

48. Reading down the columns in this table suggests that:
- (1) Ethnic Minority entrants are treated favourably --- becoming over-represented as a percentage of successful BVC students and in pupillage --- whilst low socio-economic status individuals are treated unfavourably.
 - (2) In the case of a. above for example whilst ethnic minorities represent 37% of students beginning the BVC they represent 41% of those obtaining pupillage.
49. It is possible to perform standard statistical tests to determine whether the differences in the figures in each column are statistically significant. It transpired that they are.
50. Thus the conclusion that might be drawn is that the Bar needs to investigate how these 'significant' biases in its entry process are occurring. Much time and effort might be expended on such an investigation.
51. Since the data set was constructed using a mathematical model we are able to reveal the truth behind these data.
52. In fact these data were generated so as to ensure that there is *no systematic bias* either in favour of or against either socio-economic status or ethnicity.
53. The conclusions drawn from the aggregate data are, thus, incorrect. The reason for this is that the model used to produce the data supposes that success of an individual (either at the BVC or Pupillage) is determined by a number of factors *including* their age. It also supposes that age is correlated with both ethnicity and socio-economic background. Thus the average success rate of particular groups is really determined by the age of the individuals *not* which group they belong to.
54. As is demonstrated in the next subsection, individual-level data can be used to resolve exactly these kinds of problems.

Analysis of Individual Level Data

55. Without any knowledge of the mathematical model that was used to construct the data, a careful statistical analysis of individual level data can prevent the erroneous conclusions that were described above from being made.
56. Approaching these data a statistician would note that both success at the BVC and obtaining pupillage are what are termed binary variables (take one of two values) and that a great range of statistical models can be used to examine the relationships between these and the observable characteristics of individuals.
57. By way of illustration and because it is from a statistician's point of view an obvious starting point we can consider the outcome of running a Probit analysis of these data.
58. The results of the analysis are summarised in the Table below. For reasons of space the technical details of the analysis which was carried out using the STATA statistics programme are omitted.

- 59. Rather than report parameter estimates (which are difficult to interpret) the table below reports the outcome of Stata's *mfx* command to produce estimates of 'marginal effects'.
- 60. There are a number of technical issues that mean it would be preferable in the context of real data to write bespoke routines to calculate some more appropriate statistics. However, for the purposes of illustration the following are instructive.

TABLE 4: Results of Probit Analysis of Individual Level Data – Marginal Effects

	Achieving Distinction BVC	Obtaining Pupillage
Estimated Effect of being an Ethnic Minority	-2.6%	-2.3%
Estimated Effect of Socio-Economic Status	-2.3%	+0.6%

- 61. In the table the figure of -2.6% in the first box indicates that using individual level data it is estimated that the characteristic of being an ethnic minority reduces the probability of obtaining a distinction by 2.6%.
- 62. The process of estimation using individual-level data ensures that this estimate is made assuming *all else equal*. Interpreting the other figures in the table analogously, it seems initially that there is a disadvantage to ethnicity (both figures are negative suggesting a lower chance of success at BVC and of obtaining pupillage) and an ambiguous effect to socio-economic status.
- 63. This however ignores the crucial test of statistical significance. In fact none of the figures in the Table above is statistically significant. Indeed none come close to the conventional definition of statistical significance.
- 64. Thus any competent statistician would draw the inference that (based on individual level data) there is *no evidence of an impact of either ethnicity or socio-economic status* upon either success in BVC or the attainment of pupillage.
- 65. Thus the individual level-data has correctly uncovered the truth regarding these constructed data, whereas the analysis based on aggregate data was incorrect and misleading. This is not an accident, nor is it contrived by the particular model used to generate the data. It is very well known from the analysis of many data sets concerning: school performance, discrimination in the labour market, the delivery of health care and countless other applications that failing to account for the variation between individuals generates spurious and misleading conclusions.
- 66. Utilisation of individual-level data is a proven means to avoid costly errors.

How an Individual-Level Data Set Might be Constructed

67. For the reasons set out in Section 3 it is contended that the Bar would benefit greatly from constructing an individual-level data resource.
68. A long run objective is to construct an individual level data set in respect of each year's new intake to the BVC. For each cohort the ideal would be to have as detailed individual level data as existing systems permit. Comparing cohorts would be a valuable way of assessing how entry to the Bar is changing over time.
69. These data would, in the longer term, also permit an assessment of the effectiveness of any new policies and initiatives designed to modify the entry process.
70. In the shorter term, and with a view both to answering questions that have arisen during the Working Party's investigations and as a pilot for the multiple-cohort data resource, it would be desirable to assemble an individual-level data set for a single year.
71. As an example, consider entrants to the BVC in the year 2002. Assuming it is possible for BVC providers to recover data on students on the BVC for that year (and if not, it would be possible to consider a more recent year) an individual-level data set could be initiated by first retrieving all of the relevant data from the BVC providers.
72. The data from each provider might take the form of a simple spreadsheet file. In addition to an individual's name and date of birth, the BVC result and other individual level information would appear as a series of rows in the file, one row for each student.
73. The files from the BVC providers could then be easily amalgamated into a single spreadsheet file. The list of names with perhaps other identifying data (date of birth, place of previous study) could then be extracted and used to search other data sources.
74. The most valuable starting point for further data is perhaps the Bar Council's own records. There exist a number of methods for matching data from one source with that from another. In the example being considered here the list of names and other identification features from the BVC data could be matched to the Bar Council's records.
75. This will, in a single step, produce an extremely useful data set. For each individual entering the BVC in 2002 (or whichever year is decided upon) there will exist information on whether that individual has taken up practice, some details of the practice they have entered into and so on.
76. Individuals who are on the BVC data file but have no matching record in the Bar Council may have undertaken one of a number of different paths.
77. Nevertheless they can be regarded (as of whatever date the Bar Council records are searched) as not having entered the profession in England and Wales, and thus as being non-entrants.
78. Follow-up research on these non-entrants might usefully be undertaken but is not essential to making progress in terms of data analysis.

Appendix 7

79. Already at this stage some of the most pressing concerns regarding the differential impact of the entry process on different age groups, on those from different educational backgrounds, gender and of ethnicity can be examined holding *other things equal* -- which has hitherto not been possible.
80. Further uses of even a simplified single cohort data set described above are limited only by imagination and the willingness to commit resources.
81. Are there regional biases in the entry process?
82. How does education interact with a student's background in determining their chances of success?
83. Are some BVC providers consistently more successful than others at producing members of the profession?
84. Do some BVC providers have a tendency to produce more a certain kind of barrister (criminal vs. civil or publicly funded vs. privately funded)?
85. All of these are questions that can be addressed.
86. Further data linkage extends the set of possibilities. How are gender, educational and social background reflected in fees generation --- *other things equal*? To answer these kinds of question the individual-level data need to be linked to indicators of fees income of the kind maintained by Bar Mutual. This would involve a further round of data matching.
87. Additional cohorts of data would then permit an analysis of how the answers to all of the many questions set out above are evolving over time.

Ensuring Confidentiality

88. The desire to establish an individual-level data set derived from different sources and containing information on named individuals raises the spectres of data protection and confidentiality.
89. Natural questions to ask are: how will the information be kept confidential? and what safeguards will exist to protect individual's privacy?
90. The first point to note is that nothing that is being proposed involves collecting any new information about anyone. All of these data already exist, have been collected for legitimate reasons and are safeguarded in accordance with legislation and the promises that the various institutions/organisations have made to the individuals concerned.
91. The new element being proposed is in the matching of one data set to another.
92. This does raise concerns because the data need to be released to a third party.
93. It is not the purpose here to attempt to fully articulate those issues or how they can all be resolved. It is, however, worth noting that data matching occurs in a number of contexts and that methods for ensuring data integrity, confidentiality and for

maintaining the privacy of individuals already exist.

94. In summary how the process works is as follows.
95. Data is provided on the understanding that it will be stripped of all elements that identify a specific individual. Thus in the first instance data supplied by, for example, a University is first used to generate a unique (but completely coded) personal identifier.
96. At this stage the data set becomes individual-level but anonymous --- it looks exactly like the data in Table 1, which do reveal sensitive things about individual A106 but which never identifies this individual.
97. The identifier file (essentially a list of names linked to the encoded identifiers) is stored separately from any data files and is analogous to a telephone directory stored safely.
98. Any data that is to be matched is done under the veil of anonymity by first eliminating names and other personal details and replacing those with the coded identifier.
99. In no case does analysis require the analyst to know the names of individuals and for all conceivable purposes even the coded identifier will be deleted from the file -- it is only included to ensure that the relevant characteristics of the now anonymous individual can be correctly matched up.

Summary

100. This appendix has been concerned with reviewing available data and examining the case for establishing a data resource in order to better inform future policy in respect of entry to the Bar.
101. If the Bar is to continue to develop an active approach to (i) monitoring itself as a profession, (ii) ensuring that entry to the profession is fair and open and (iii) adopting policies in response to i. and ii., then it would benefit from establishing a resource that is based upon information concerning the background and progress of entrants.
102. Whilst at present there are a number of sources of data that inform a discussion the process of entry to the Bar, these are not coordinated and none presents information on a sufficiently detailed basis.
103. In particular aggregate data can lead to incorrect conclusions but individual-level data have the means to resolve the underlying relationships between an individual's characteristics and the outcome of the entry process.
104. This was illustrated in relation to a constructed data set which captures the key elements of data which the Bar could choose to collate on an individual basis.
105. Recording details of an individual gives rise to concerns about confidentiality and data protection. However, it has been argued that these concerns can be addressed by designing appropriate mechanisms.

THE SOCIAL MOBILITY FOUNDATION SCHEME

1. The SMF is a small charity founded by Linkson Jack in June 2005. The present trustees are the Rt. Hon. Oliver Letwin MP, Peter Bournnell, Russell Lewin, Lis Astall, and Geoffrey Vos QC. Details can be obtained on its website at www.socialmobilityfoundation.com
2. In 2007, the SMF placed some 140 school students in various professional internships including accountancy, medicine, banking and the law. It aims to grow over the next five years to place some 1,000 students from all over England and Wales. Of these, it may be hoped that about 100 will be placed in Chambers or at the employed Bar every year.
3. The SMF identifies able school students by developing close relationships with relevant schools. This is the key to a successful project, because the Bar does not have the resources to undertake this task.
4. The criteria for participation in the SMF placement scheme are that the student is:-
 - (a) In Year 12 or 13 (though most are at the end of year 12);
 - (b) Predicted to obtain at least one grade A and two grade Bs at A level.
 - (c) Benefiting from either free school meals or a school maintenance grant.
5. The programme for the internships at the Bar this year involved a day of induction and lectures explaining about the Bar as a profession, 2 days in Chambers with a dedicated young barrister charged to explain his/ her practice and the proceedings upon which he/she was engaged, a day at Snaresbrook Crown Court with HHJ David Radford, the Resident Judge, explaining the day's proceedings, and debriefing and discussion sessions.
6. The SMF is now introducing a new e-mentoring project to enable the benefits of the placements to be followed up, and so as to provide an opportunity for the school students wishing to follow a career at the Bar to be advised, encouraged and mentored on their future career moves.
7. Members of the Working Party met with the school student on this year's SMF scheme, and were extremely impressed with their ability to learn quickly about an unfamiliar professional environment. The reports from Chambers participating in the scheme were extremely encouraging. There is little doubt of the benefit of such schemes, although there is a limit to their expansion, because talented school students from disadvantaged backgrounds are not easy to identify.
8. The great advantage of the SMF scheme is that it enables able school students to take an informed decision at an early enough stage to enable them to choose to read law at university. In many cases, clever students make ill-informed decisions about their university courses and then decide too late that they would be interested in a career in the law. As a result, they are faced with the high costs of a CPE conversion course, which adds to their already significant financial burdens.

RECOMMENDATIONS FROM THE FIFTH DRAFT OF THE WILSON REPORT ON THE BAR VOCATIONAL COURSE

BVC Course Specification

1. *Course content.* It is recommended that:
 - (a) The increasing specialisation at the Bar should be better reflected in the BVC course content.
 - (b) “Knowledge” modules comprising both Criminal and Civil Litigation, should be taught at a general introductory level and students should be then be able to choose from a number of Elective (Specialist) Advanced Litigation Options.
 - (c) More substantive, procedural and adjectival (evidence) law should be integrated into the teaching of the “skills” components of the BVC.
 - (d) A Unified Mediation Advocacy course unit should be introduced on the BVC.
 - (e) Practical Legal Reasoning and Analysis of Evidence course(s) should be introduced and assessed as part of the BVC “skills” components.
 - (f) Courses in Ethics Forensic Accountancy and Equality and Diversity should be introduced and assessed, either separately or as part of the assessment of other skills such as advocacy or conference skills.
 - (g) Practice Management skills, including “office skills” and the basic principles of how to run an effective modern professional practice at the Bar, should be taught. Further consideration should be given as to whether such a course requires separate assessment.
2. Further consideration should be given to reform of the BVC Negotiation course in content and delivery. The object being to attain the standard and quality of negotiation courses offered by the leading educational institutions in the field.
3. *BVC Assessment Framework.* A specific review of the weighting and percentages allocated to each subject area in the BVC should be carried out by the Bar Standards Board, once its general review of the BVC course content is complete.
4. *Quality Assurance.* It is recommended that the Bar Standards Board urgently review, at each Provider, the quality assurance mechanisms for the BVC.
5. *Duration.* It is recommended that the BVC retains its current length of at least 32 weeks’ duration.

6. *Level.* It is recommended that:
- (a) On completion of the BVC, each successful student should be awarded a Postgraduate Diploma in *Professional Legal Practice for the Bar*.
 - (b) The BVC should be designed and delivered in a way that will enable it to be recognised as QAA Level HE4 (Masters level), either by way of elective option upon completion of the course content for the BVC postgraduate certificate or by way of upgrading the entire BVC course content to Masters level.
 - (c) Providers offering the BVC at Masters Level should be made to satisfy the Bar Standards Board or (a Bar Examinations Board), in addition to others, that they were able to teach the BVC at that level.
 - (d) The Bar Standards Board should act now to regulate the content, structure and duration of existing Masters programmes for the BVC.
7. *Bar Council prescriptions for the BVC.* It is recommended that the Bar Standards Board carry out an in-depth review of the current Bar Council prescriptions for the BVC (in particular with regard to matters such as library holdings and provision of computers for student use), with a view to ascertaining whether any suitable reductions can be made to the costs of the course.

Methods to ensure standards at point of entry

8. *English language proficiency.* It is recommended that the BVC Providers be reminded immediately of their responsibilities to remove students from the BVC where students fail to demonstrate the necessary spoken and written English language proficiency (irrespective of whether the student is a ‘home’ or foreign student). The Providers should also be politely informed that the Bar Standards Board will specifically review their files on this issue when considering re-validation. .
9. *Measures to improve standards at point of entry.* With a view to improving standards at point of entry for the BVC, it is proposed that the Bar Standards Board give consideration to implementing *one or more* of the following:
- (a) *Minimum attainment of a 2:1 degree classification (or equivalent).* Should attainment of a 2:1 honours degree in law (or equivalent qualification, such as an appropriate pass on the CPE) be made minimum conditions of entry for the BVC?
 - (b) *English language proficiency test.* Should enrolment on the BVC be made conditional in the case of each student (home or foreign) on their passing an English language proficiency test for the Bar (“English Language Test for the Bar” or “ELTB”)?
 - (c) *Entrance examination.* Should the Bar Standards Board introduce (in the medium term) an entrance examination for all applicants for the BVC, in order to determine whether an applicant’s aptitude and/or legal knowledge is

suitable for a re-vamped BVC and/or for potential practice at the Bar of England and Wales?

The Training for the Bar Committee recommends:

- i. In the medium term: an Entrance Examination for all BVC applicants which would test aptitude for practice at the Bar of England & Wales, basic knowledge of the core law subjects and English language proficiency.
- ii. In the short term:
 - An English Language Proficiency Test for all BVC applicants; and
 - Attainment of a 2:1 (or equivalent, including an appropriate pass on the CPE) be made minimum conditions of entry for the BVC.

Final Assessment of Competence before Practice

10. *Bar Examinations Board and one Finals examination.* It is recommended that:
 - (a) The Bar Standards Board set up a Bar Examinations Board; and that
 - (b) One set of Final examinations should be introduced for all BVC students in all *appropriate* subjects, irrespective of the institution attended by the student.
11. *Central setting of Final examinations.* The Bar Standards Board should give consideration to the extent to which central setting of Final examinations would be appropriate and practicable for the “skills” as well as the “knowledge” components of the course.
12. *Local assessment of BVC Final examinations.* It is recommended that:
 - (a) BVC Final examinations should be marked and assessed locally at the Provider where a student is registered, subject to marking schemes being laid down centrally by the proposed Bar Examinations Board.
 - (b) Moderation of the marking/assessment for the Final examinations should be conducted by a Bar Examinations Board, with the assistance of external examiners.
13. *Student attendance at Provider necessary?* In the context of the “outcomes” versus “process” debate, the Bar Standards Board should give further consideration to the question of whether attendance at an accredited Provider is a necessary pre-requisite for sitting the BVC Final examinations.
14. *The BVC, pupillage and the New Practitioners’ Programme.* It is recommended that there should be greater and more formalised communications between the Providers, the Inns of Court, the Inns Advocacy Training Committee, the Specialist Bar Associations, and the Circuits; with a view to producing an holistic approach

integrating the training of basic core skills on the BVC with formal training in pupillage and on the New Practitioner Programmes.

15. It is recommended that the Bar Standards Board mandate that the Providers guarantee a minimum amount of time students are to spend “on their feet” during training on the advocacy course unit.

Disparity between numbers on the BVC and available pupillages

16. *Reduction of numbers on the BVC.* It is recommended that the Bar Standards Board takes measures to improve the quality of the student intake such as would also have the collateral benefit of reducing numbers enrolling on the BVC; in particular, the Bar Standards Board should *consider*:
 - (a) Making the award of a 2:1 honours degree classification in law (or equivalent) the minimum classification for entry on to the BVC; and/or
 - (b) Introducing (in the medium term) an entrance examination for the BVC.(also see Proposals at Points 8 and 9 above).
17. *Publication of information relating to pupillage.* It is recommended that:
 - (a) The Bar Council should make readily available on its website information relating to each Providers’ track records in terms of the number of students passing the BVC, the grades obtained and the numbers who went on to obtain pupillage; and that
 - (b) The Providers should send out an information pack to each applicant for enrolment on the BVC, statistical information from the Bar Council relating to pupillages. The Bar Standards Board should make provision of this information by the Providers a condition of validation



THE GENERAL COUNCIL OF THE BAR

TRAINING FOR THE BAR COMMITTEE

REVIEW OF OLPAS RULES AND BVC ONLINE

REPORT OF OLPAS RULES WORKING PARTY

INTRODUCTION

The Working Party was set up by the Training for the Bar Committee to take on the work of the previous similar group which reported to the Education and Training Committee in reviewing the rules governing the On-Line Pupillage Application System [OLPAS] and BVC Online. A consultation paper was issued with the approval of the Training for the Bar Committee on 15 August 2006⁶⁵ seeking views on a number of aspects of the current timetable and system for the selection of pupils by chambers. The group has received a large number of responses to that paper from the Inns, BVC providers, representative bodies, Bar Council Committees, chambers and individual members of the Bar and students. These views have been very helpful to the Working Party in preparing this report, and we are very grateful for the effort made by many of the respondents to offer thorough and reasoned points of view. While the body of our report summarises the range of views on certain issues, a numerical analysis and a more detailed summary of the responses are appended to the report.⁶⁶

This report is intended to address what appear to be the central issues concerning the pupillage selection timetable, OLPAS membership, and whether there should be a clearing house. We have concluded that decisions need to be taken on the broad principle of these matters before some of the detailed work necessary to implement change can be started. The direction of travel needs to be known before such work is done. Some of the recommendations, if adopted, would require consideration and implementation by the Bar Standards Board.

While the report expresses views and in some cases offers recommendations, we are conscious that we as a group are not representative. For instance, as some respondents pointed out, our membership includes no member of the independent Bar in a set of

⁶⁵ See Appendix 1 for the consultation paper.

⁶⁶ Appendices 2 and 3.

chambers which is not a member of OLPAS. Therefore the report is written for consideration of bodies within the profession which are representative with a view to their taking forward the necessary consideration of what, if any, change, regulatory or otherwise, should be made. For that reason we have taken care to reflect the range of views from respondents on the central issues.

This report should be read in conjunction with the consultation paper and, where possible, repetition of what is said there will be avoided.

Our consideration of the issues involved has been on the assumption that the formal requirements for qualification as a practising barrister in England and Wales remain as they are, in particular in relation to pupillage training requirements and deferral of call.

THE ISSUES

On considering the issues raised in the consultation paper again in the light of the responses it has become clear that there needs to be a quite separate consideration of issues connected with the pupillage selection timetable from those which concern the membership and administration of OLPAS. Further, any requirement for compulsion, either in relation to the timetable or OLPAS will require regulatory change made through the Bar Standards Board. Any such regulatory change may take longer to make than administrative changes in a voluntary system. The latter, where found to be desirable, should not be delayed because of the regulatory needs of the former. In the light of this the issues we propose to consider in this report are as follows:

- *Should there be a common and compulsory timetable for the processing of pupillage applications regardless of membership of OLPAS?*
- *If there is to be a compulsory system should there be a sanction?*
- *Should there be one season or two?*
- *What should the dates be in the timetable?*
- *Should applications more than one year in advance of pupillage be permitted?*
- *Should there be a clearing house facility?*
- *If so, what form should this take?*
- *Should membership of OLPAS be compulsory?*
- *Should there be a professional sanction for not complying with the OLPAS rules?*
- *How should OLPAS be funded?*
- *What information should OLPAS require of applicants and provide to pupillage providers?*

SHOULD THERE BE A COMMON AND COMPULSORY TIMETABLE?

The current position:

Chambers who are members of OLPAS are required by its rules to comply with its timetable [see the rules appended to the consultation paper]. Non-members are recommended by the Bar Council to adopt the same timetable, but there is no compulsion. Some chambers recruit outside the common timetable at least to the extent of making offers which have to be accepted or rejected before the candidate is able to know whether any offer will be made to them by sets following the timetable. A schedule showing the timetables currently advertised by non-member chambers is appended.⁶⁷ Candidates are limited to applying in any one year to 12 OLPAS sets, but can apply to an unlimited number of non-OLPAS providers.

The responses:

A significant majority of respondents favoured a common timetable applicable to all pupillage applications. These included Specialist Bar Associations, representatives of new practitioners, BVC providers, and many chambers ranging from large commercial to common law and provincial sets. While some responses were bare answers to the questions and offered no reasons, others developed closely reasoned arguments for their views. The reasons given, where offered, varied widely, and many respondents' support for a compulsory common timetable was conditional on their own perception of a desirable timetable being adopted or continued.

In summary the arguments in favour put forward included:

- It would allow fair competition between all candidates in any given year – a “level playing field”
- It protects candidates from undue pressure to accept early offers and “stealing” of “good” candidates
- Choice is increased for candidates if all offers are issued at the same time
- It avoids spiralling competition between chambers making ever earlier selections
- It allows for an orderly process in training in any given year

While the number of respondents opposing compulsion represented a minority they included some very substantial commercial and specialist sets. Their principal objections related to, as they saw it, restriction of competition whether between chambers or between the Bar and solicitors' firms and a hostility to any form of restriction for which they believed there was no valid justification. Some suggested that a compulsory timetable would be unlawful.

The arguments against compulsion included:

- A compulsory timetable would be anti-competitive
- Solicitors and other professions do not operate to a common timetable

⁶⁷ See Appendix 4.

- It might limit the number of places, e.g. where last minute vacancies arise
- It does not suit the requirements of specialist sets, small sets, big or financially successful sets
- There is no need to allow candidates a simultaneous choice
- “Interference” by the Bar Council is not warranted
- Such regulation as was necessary could and should be achieved through the rule prohibiting discrimination
- It would reduce the flexibility of the recruitment process
- Some argued that compulsion was inappropriate unless the date involved was before the BVC and some that it was inappropriate unless it was after the BVC
- The effect on the employed Bar has not been ascertained
- The regulation of a voluntary process may reduce the number of pupillages offered

While the summary of responses [Appendix 3] gives a slightly more complete overview, on this crucial issue we think it is instructive to offer a more detailed summary of some of the views expressed. What follows does not, however purport to set out in full the arguments of any respondent. The full file of responses is available for inspection at the Bar Council offices.

The three Inns of Court who responded were broadly in favour. Gray’s Inn thought there would be considerable benefit in a common timetable. Inner Temple said it placed importance on a timetable which would allow candidates to know if they have secured pupillages or not prior to commencing the BVC. While in favour of a common timetable the Inn thought that it should not restrict access to pupillage and that a clearing house system should be established. A majority of the relevant committee at Lincoln’s Inn thought that unless all chambers were required to be members of OLPAS:

“it was likely that an impression would be given that some were uncomfortable with the regulations imposed on OLPAS member Chambers. It was considered that a disparate approach that this showed was not appropriate within a profession for whom demonstrating equality of opportunity is important.”

It was thought that the on-line system:

“gives an opportunity for the profession to disillusion those who have a perception of entrance to the Bar being dependent on those who one knows. It gives the Bar an opportunity to demonstrate that its recruitment procedures are efficient, transparent and fair.”

The three Equality and Diversity Committees of the Bar Council agreed that there should be a common and compulsory timetable. They considered that this was necessary to ensure a fair, open and transparent system.

The Criminal Bar Association was strongly of the view that there should be a mandatory timetable and that this was:

“in the best interests of all the applicants as well as in the best interests of Chambers.”

The Family Law Bar Association was also in favour, as it would provide clarity for chambers and students as to when applications should be made, assist in meeting the Calvert-Smith objective of recruitment before the BVC and address the perception that the

earlier recruiters had a greater choice of candidates. However any timetable should be sufficiently flexible to allow all to comply with it.

The Commercial Bar Association thought that a common timetable would support fair competition.

The London Commercial and Common Law Bar Association favoured a common timetable as it ensued a “*level playing field*”, a phrase which recurred in many responses.

The Intellectual Property Bar Association favoured a common timetable because they saw it as “*key to an orderly process for the selection of pupils.*”

However the Employed Barristers’ Committee expressed concern that the consultation paper had not addressed the position of pupillages in the employed sector. They suggested that a single period for applications would be:

“very limited for the efficient business need of both small and larger organisations.”

They thought it might further restrict the ability of organisations to offer pupillages.

Individual chambers’ responses contained more variety of view. Most chambers were in favour. One London set, while opposing strongly compulsory membership of OLPAS gave the following reasons for supporting a compulsory timetable:

“It allows applicants the opportunity to choose the set to which they feel that they would be best suited. This is particularly important for the best candidates who may receive a number of different offers. Having different timetables can lead to unseemly attempts to get offers out before rival sets of chambers. Applicants can then be faced with an unfortunate “bird in the hand or two in the bush situation” with the risk that they make a choice which they subsequently regret. Another advantage... is that a candidate who finds himself or herself as a reserve from their first choice set, can afford to wait without being “bullied” into acceptance, at least for 14 days to learn if a better place will become available. From chambers’ perspective, an ever escalating war is avoided in which rival sets vie with each other to make earlier and earlier offers to the perceived best candidates. The result is that some dark horses who may emerge after a fair competition will be missed. Such a process also encourages recruitment concentration on a few universities which may have a negative effect on the diversity of the recruitment process.”

Another set stated that:

“Freedom of choice is not a sufficient justification for the maintenance of a system that places needless pressure on applicants with little evidence of overall benefit to the Bar as a whole.”

A set of tax chambers, not now members of OLPAS, supported a common timetable as they thought it would be preferable for candidates to know whether they have secured a pupillage before the BVC starts, but they thought that the timetable would have to apply to all pupillage providers including those over which the Bar does not have jurisdiction.

A major commercial set supported OLPAS but found that a major disadvantage was that the timetable was not compulsory; rivals remained outside the scheme in order “*to steal a march on the competition*” by making offers before the OLPAS deadline and put pressure

on applicants. They considered this was unfair to prospective pupils and OLPAS chambers who are prepared to participate in fair competition.

A large family law set supported a common timetable:

“The common timetable puts chambers and candidates in the best possible position but must be universally complied with to be effective and fair.”

A provincial set complained:

“Over recent years we have experienced difficulties (whilst ourselves complying with OLPAS regulations) whereby other sets of Chambers have made offers of pupillage, outside the OLPAS timetable, to candidates who we have invited for interview within the timetable. As a result these candidates accepted the offers made outside the OLPAS timetable. As a Chambers we consider we have been disadvantaged by stringent compliance with the Regulations.”

Another provincial set, describing itself as a small common law set, while objecting to compulsory membership of OLPAS supported a compulsory timetable. Their objection to OLPAS was principally that a restriction on the number of applications disadvantaged chambers like theirs, but they went on:

“We are perfectly happy that a candidate should be in a position to consider all of their options at the same time, whether they come from OLPAS or non-OLPAS sets, without undue pressure of time, and accordingly would support the introduction of a common timetable.... Our primary concern is simply that the system allows us a fair opportunity to see good candidates, make offers to them and then leave it to them to decide whether we are the right set for them, rather than excluding us if we are not part of their top 12.”

Sets which opposed a compulsory timetable did so for a variety of reasons. Some argued that if their procedure were open, fair, and non-discriminatory, there should be no attempt to regulate it. It was argued strongly by some that chambers recruited pupils for their own purposes and not as a public service. An intellectual property set strongly opposed a common timetable because it was felt it would prejudice smaller and specialist sets and inhibit their ability to take on a pupil. They doubted the legality of such a restriction and thought it would restrict choice for both candidates and chambers.

A commercial set who are not members of OLPAS, expressed concern that the Working Group was made up of members of the Bar who were all in OLPAS member sets. They also objected forcibly to a requirement to conform with a:

“straitjacketed procedure, ill suited to our needs, simply because other chambers find it convenient (possibly because they do not want to spend the time which we are prepared to invest)... Within the limits of the law and the requirements of the Code of Conduct we should be allowed to use any recruitment process that we like.... There is nothing wrong with legitimate and healthy competition and it is not the business of the Bar Council to interfere with it.”

They pointed out that no other profession imposes limits or restrictions on recruitment. They considered it “*patronising*” to treat applicants as if they needed protection against making difficult decisions for themselves. It was not the function of the Bar Council to protect any group of chambers in competition for good candidates.

They argued that there was nothing wrong with healthy and legitimate competition and that it was not the business of the Bar Council to interfere with it. If it was thought that any chambers were not complying with the requirements of equality of opportunity and treatment it could do so by other means.

Another commercial set, although a member of OLPAS, objected to a compulsory timetable and argued that the system should only survive if it works. It should be accepted that the OLPAS timetable would not suit the needs of all and that flexibility should be allowed.

The South Eastern Circuit supported a common timetable because it prevented “early cherry-picking” and was manageable for chambers and candidates alike.

Those respondents who represented or were from BVC providers were in favour of a common and compulsory timetable, but subject to it not requiring selection before candidates embarked on the BVC.

The Young Legal Aid Lawyers were in favour on the ground that it would assist diversity and access and greater consistency in applications procedures. A BVC student wrote to say that it would avoid what he had found to be a time consuming and distracting process of pursuing applications on different timetables.

The Bar Council’s Young Barristers’ Committee was also in favour of this proposal as being in the best interests of all concerned. However they suggested that it should be flexible to allow recruitment at the same time as solicitors and others, and accordingly proposed that recruitment a year early – i.e. two years before the pupillage begins – should be allowed.

One student who saw some benefit in the proposal thought that it would only work if there was an increase in the number of applications that could be made in OLPAS. A recently qualified barrister thought a common timetable would have alleviated the problem he and colleagues had experienced of being in a difficult position when offered a pupillage by a non-OLPAS set in advance of receiving OLPAS members’ offers.

View of the Working Group

The views expressed here are on the assumption that the existing basic requirements for qualification as a barrister and acquisition of rights of audience are to continue. We have taken into account the BSB’s recently announced opposition to the deferral of call. The views which follow are those of most, but not all, of the Working Group.

Pupillage is an essential part of the training required to qualify fully as a barrister to obtain the associated rights of audience. It is the gateway through which all have to pass in order to pursue a professional career at the Bar. Professional regulation rightly requires this step to be taken by almost all those aspiring to such a career. There is an obvious public interest in ensuring that those who obtain this qualification and these rights are appropriately qualified, have the requisite abilities and have been selected in fair competition against all those seeking to pass through the same gateway. There is a further public interest in ensuring that the best and most able candidates obtain the places available and that a system is in place which identifies such candidates.

In addition to the well known financial challenges involved in acquiring training as a barrister, the shortage of vacancies as compared with the number of applicants is a serious obstacle which candidates have to overcome. It is likely to deter those who perceive the Bar as favouring an elite group from advantaged backgrounds over more diverse, or less advantaged sectors of society. If applicants have to apply to individual chambers running their own timetables, the odds suggest they may well have to face serial and multiple rejections before being offered a pupillage, however able they are. Such an unregulated process is likely to deter those from economically disadvantaged and ethnic minority backgrounds even more than those from well financed and established backgrounds. The disadvantaged will have less confidence to apply serially to many different chambers than those from more advantaged backgrounds. Rejection by one set will undermine their self-confidence and reinforce their belief that the Bar favours those from “traditional” backgrounds. The lack of financial resources may mean they can afford to devote less time to the application process than others. It is no answer to these points to say that most chambers abide by a common timetable voluntarily: the more chambers that are outside such a timetable the less choice there is within it. It is not necessarily, as can be seen from the responses above, the large commercial chambers who are against a compulsory common timetable, but to the extent that such chambers exclude themselves, it may be perceived that places in “elite” sets are offered preferentially to those who have the confidence to apply individually to sets. To the extent that, for instance, chambers reliant on publicly funded work seek to gain a competitive advantage by selection in advance of others pressure can be applied to candidates to accept a known place, when they really want to attempt to obtain one in a different set. The consequent pressure will affect those from disadvantaged backgrounds disproportionately and act as a restriction on their choice

In this regard the Bar may be perceived by those thinking of a career in the law as less attractive than the solicitors’ profession where the number of training vacancies as compared with the number of candidates is greater. For example, in 2005/2006 there were 8843 full time training contracts and 2498 part time training contracts with 9171 students enrolling in total. It is in the interest of the Bar that applicants from as wide a range of social and economic backgrounds as possible are encouraged to join the profession. To provide a competitive and credible service to the public in the 21st century this is essential.

It is also in the public interest in the proper administration of justice that as many as possible of those who have the requisite abilities are enabled to qualify. It must also be in the public interest that the competition for places is fair, orderly, and allows those from all backgrounds a fair chance of obtaining a place on the basis of merit. A system which hinders a fair process or leads to the exclusion of those best qualified on merit is against the interests of the system of justice.

The voluntary current system for recruiting pupils may be thought to suffer a number of disadvantages to all those who provide pupillage or are seeking it. While OLPAS sets have a common timetable, only a limited number of applications can be made in a highly competitive “market”. If the chambers to which candidates principally wish to apply are in OLPAS they may feel hesitant about applying to other, from their point of view, less desirable chambers who are not in OLPAS and do not conform to the timetable. Such candidates may have to decide whether to abandon their first choices in favour of less preferred ones. Similarly, candidates of whatever background who have applied to non-OLPAS sets can be subjected to pressure to accept offers without knowing whether an OLPAS set will make one to them. The result is that chambers are not competing on a level playing field and candidates are not being given a full range of choice. Free of rules,

chambers competing for the “best” candidates are likely to be tempted to push back their selection timetable progressively earlier to try to beat their rivals. The earlier that candidates have to make choices of to which chambers to apply and which offers to accept, the less opportunity they will have had to obtain the information required to inform their decisions, and to develop the achievements and experience which will increase their attraction as candidates. The earlier the timetable, the greater is the disadvantage to those who come to law late, as will many candidates who come from the more economically deprived backgrounds. The longer the interval between the deadline for applications and date from which offers can be made, the fewer choices candidates have at any one time.

The “market” for solicitors training contracts – and similar positions in other professions – is not subjected to a common timetable, but the large number of firms and vacancies makes the choice available much wider.

Therefore the majority of us disagree that a compulsory common timetable would restrict competition. Indeed it would promote fair competition between all those offering places and between all those seeking them in any one year. Candidates would have all available places to choose from as the subject of their applications, and providers would have the whole pool of candidates who have expressed an interest in them to choose from, subject to any limit in numbers that is deemed desirable within the OLPAS process.

A common timetable continues a pattern candidates will have followed in their education and training up to that point. Candidates for pupillage generally hope to take up a pupillage as soon as they have successfully completed the BVC and are qualified to do so. They will all have been through a course at a BVC provider, all of which have much the same dates for the completion of their courses. Most pupillages begin and end at approximately the same time of year.

The advantages to students are that they can take part in a fair competition in which all those seeking pupillage are able to be assessed by providers at the same time. No candidate or chambers can claim an advantage by reason of early contact at an elite university, personal contact or other method inimical to fair and non-discriminatory competition and selection. The knowledge that this is so is likely to encourage those from backgrounds perceived to have less advantages in this regard to come to the Bar, having been given increased confidence that they will receive fair consideration alongside all those seeking places.

Those fortunate enough to receive more than one offer of pupillage have the opportunity of comparing the respective merits of the providers before making a choice. They are given a degree of protection from the pressure created by their vulnerable position arising out of the large numbers competing for limited vacancies. There is a public interest in a strong legal profession in which those who merit a training in pupillage have the best and fairest chance of obtaining it. Candidates from less advantaged backgrounds in particular may be deterred or hindered by a system in which they have to make multiple applications at random times to individual chambers.

The advantages to providers are that they can more easily run transparently fair selection procedures in fair competition with other providers. They can more easily and fairly compare the merits of candidates when they know that all candidates available in any one year have had an equal opportunity of applying to them and other providers at the same time.

The advantage to the profession is that it promotes the orderly progress of bar students through the training required for qualification and facilitates appropriate monitoring.

The principal argument that has been advanced against a compulsory common timetable is that it is anti-competitive. In the view of the majority of the working group, and for the reasons given above, it in fact achieves the opposite: a fair competition in which all candidates can compare the merits of all available places, and all providers can compare the merits of all those who have applied to them. Associated with this argument, however, is the suggestion that a compulsory timetable would be unlawfully anti-competitive. We have not had access to specialist legal advice on this important matter, and clearly such advice would be required before any regulatory change were to be made. However the majority of us consider that there appear to be potentially strong public interest arguments in favour of any restriction on competition that arises out of this degree of compulsion.

The argument that a common timetable is detrimental to specialist sets is not understood. Their needs for pupils can be accommodated in a common timetable. Their special needs for information or different approaches to assessment are more pertinent to the issue of whether they should be compelled to be members of OLPAS, and to the length of time required between the deadline for applications and the beginning of the offer period. Indeed we do not see that the common timetable, if considered separately from OLPAS, requires a common deadline for applications, merely a date by which all vacancies must be advertised and a date before which no offer can be made. Subject to those parameters each chambers could be free to choose how long it would take over its selection process.

Some commercial and chancery sets have argued that a common timetable would restrict their ability to compete with large commercial solicitors' firms. If correct, this would be a matter of legitimate concern which would need to be corrected. As we understand the position the competition arises by reason of contact being made with students while still at university and their being offered training places at that stage. It seems to us that, if thought desirable and non-discriminatory as a practice, as to which we offer no opinion, the timetable need not restrict the year for which a pupillage is offered. In other words, while most chambers would doubtless continue to offer pupillages to start in the year following the selection procedure, others would be free to offer pupillages to start in the year after that. The important requirement of the timetable would remain, however. All candidates in any one year interested in such a deferred pupillage would be able to compete for it. Effective competition with solicitors for promising undergraduates could continue.

The points made about pupillages in the employed setting are more difficult to address in a common timetable. It is likely that different organisations will have different requirements from each other and the independent Bar. It is already apparent that there is genuine difficulty in accommodating the offer of such pupillages within the advertising requirements. We understand that this problem is being investigated elsewhere by a working group focusing on pupillage training organisations. The working group's recommendations will then be put before the newly established BSB Education and Training Committee.

To the extent that such organisations intend to offer pupillage training to persons already employed by them, and are permitted to do so, it seems to us that involvement in a common timetable is neither necessary nor practicable. As these are places which will not be open for competition by others there is no need for adherence to a common timetable. However we see no reason why pupillages offered by such organisations by open advertisement should not have to be processed in accordance with any requirements imposed on the

independent Bar. However such organisations should be able to apply for exemption from the requirements to the relevant regulatory committee, as should independent chambers, on being able to show exceptional reasons why they should be exempted. An alternative would be to exclude employed pupillages from the requirements of the common timetable altogether.

Anxieties about prejudice to CPE students are similarly better addressed by ensuring that the dates of a timetable do not have this effect. Their particular needs do not outweigh the general desirability of a common timetable.

It has been suggested that a compulsory scheme would have the effect of reducing the number of pupillages on offer. It is a matter of record that the number is diminishing now and this is obviously a matter of concern which needs to be addressed. However it is clear that whatever is the current cause it cannot be a compulsory timetable when there is none. We do not accept that setting common dates for selection will have any further effect of this nature. One argument put forward was that a common timetable would limit the number of places available by discouraging or preventing last minute vacancies being offered. We suggest that such vacancies can be catered for within a clearing house scheme, which is considered below.

The minority view

The minority of the Working Group was prepared to contemplate a compulsory common timetable if satisfied on compelling evidence that what was regarded as an interference in the freedom of chambers to conduct their business could be justified. The minority thought:

- (i) no complaints relating to the current system, other than those prompted by the survey, had been received from applicants, chambers or the Bar's regulators;
- (ii) the fact that a "level playing field", created by a compulsory timetable, is unnecessary is shown by the fact that the majority of Chambers are prepared to sign up to the "lower playing field" i.e. that created by the voluntary timetable imposed by OLPAS; and if it were desirable to level the playing field, this should be done by improving the OLPAS system to make it more attractive to non-members rather than by compulsion. There is a flavour in some of the responses of a desire of some chambers for the Bar Council to involve itself with the fairer distribution of talent amongst chambers – this is no function of the Bar Council. The best chambers must be free to find the best applicants and vice versa;
- (iii) there is no currently no evidence of any link between the very serious problem of lack of diversity of applicants to Chambers and the unregulated nature of the application procedures to Chambers. The link suggested by the majority, namely that applicants from poorer backgrounds are put off by a myriad of applications to Chambers, (a) is a hypothetical link, (b) it was not shown that applicants are in fact currently having to make a myriad of applications; and (c) potentially, in the view of the minority, rather patronising to promising applicants from poorer backgrounds; the diversity point arises, in the opinion of the minority, more out of an understandable and commendable desire of the committee to make its contribution to the solution of the problem of lack of diversity, than on the evidence. No such link was put to the respondents of the survey. If there were real evidence of a link, then that would provide sufficient justification for interference,

and the minority has no doubt those Chambers who currently disagree with the proposal for a single timetable would not dream of resisting such interference;

- (iv) the most persuasive points made by the majority were (a) that an application to Chambers is a gateway to a professional qualification; (b) that those Chambers who, in response to the survey, opposed the compulsory timetable on the grounds that, in inviting applications for pupillage, Chambers were performing no public function, were wrong; and (c) that it was appropriate in accordance with the Bar Council's public function to regulate the gateway so that it proceeded in an orderly manner. However, on balance, the minority considered that, in this particular case, the need to regulate did not outweigh the need for chambers to exercise complete self-determination in the selection of pupils, including strategies which Chambers believed to put them at an advantage with respect to other Chambers, provided always that the existing anti-discriminatory provisions and such pro-diversity measures as may be formulated by the appropriate committees of the Bar Council, were complied with and rigorously enforced.

Conclusion

The majority of the Working Party recommends that there should be a common and compulsory timetable for applications and offers of pupillages by providers in independent practice. As the implementation of this recommendation would require approval and formulation by the Bar Standards Board, it is recommended that the Bar Council adopts and approves the recommendation and requests the Bar Standards Board to take the relevant steps to implement it.

Sanction

Most respondents agreed that if there was to be a common and compulsory timetable breaches of the requirement should be the subject of sanction under the Bar's Code of Conduct.

The Working Group unanimously agreed that without such sanction there was little prospect of a common and compulsory timetable being effective. It would be hoped that in the vast majority of cases of transgression of the rules advice or warning would be sufficient to prevent a repeat of the conduct. It was agreed that the professional responsibility for a breach of the requirements of the timetable would be on the head of chambers, and any member of chambers who participated in the commission of the breach. Consideration was given to the possibility of nullifying any pupillage resulting from a breach but it was felt that this would be an unfair and disproportionate penalty to impose on the prospective pupil who was unlikely to have had any significant degree of personal responsibility for the breach. The group considered the alternative of giving the applicant the option to repudiate his or her acceptance of an offer made by Chambers in breach, but concluded that this would be difficult to implement in a way helpful to the pupil.

Conclusion

The Working Group recommends that, if their recommendation for a common and compulsory timetable is approved, the Bar Council requests the Bar Standards Board to amend the Code of Conduct to include a provision making breach of the requirements of the timetable misconduct under the Code, and that the head of chambers, and any member of chambers who participates in the breach should also bear responsibility for it.

Seasons

The current position

There are two seasons but the overwhelming majority of OLPAS members use only the summer season.

Responses

The overwhelming majority of responses favoured the abolition of the autumn season.

The arguments advanced in favour of two seasons included:

- It was not detrimental or unfair to have two
- An autumn season gives candidates a second chance
- A second season benefits the smaller chambers

The arguments against two seasons included:

- Most of the best candidates apply in and are selected in the summer season

The view of the Working Group

The reasons that lead us to favour a common and compulsory timetable also lead us to recommend the abolition of the autumn season. Fair competition requires all candidates to be considered at the same time. The supposed benefits of an autumn season are best obtained by the institution of a clearing house. [see below]

Conclusion

The group recommends that there should be one season a year and the autumn season should be abolished.

Dates For The Common Timetable

Dates

In the consultation paper it was suggested that to comply with the Calvert-Smith recommendations the offer period should be brought forward to enable students to know if they had a pupillage before committing themselves financially to a BVC place.

The initial view of the Working Party was that the dates of the timetable should be brought forward to enable students to know whether they had a pupillage before they were committed to a BVC place and the financial commitment involved, in line with the Calvert Smith recommendations. A timetable with offers being made at the beginning of March was proposed.

Responses

A very large majority of respondents thought that students should be enabled to know whether they had succeeded in obtaining a pupillage before committing themselves to a BVC place. It was argued by some that it was “immoral” for students to be committed to high fees before knowing whether they have a pupillage.

A number of respondents pointed out, however, that the earlier the process began and finished, the less chance those who have decided to try for a career at the Bar after taking a

first degree other than Law will have to inform themselves of the choice of areas of practice and of chambers and less opportunity to obtain appropriate mini-pupillages, some of which might be assessed mini-pupillages. Thus all candidates who were studying for the CPE would have less time to make such decisions. It was suggested this would be prejudicial to the socio-economically and ethnically disadvantaged groups who were more likely to make late career choices and be in greater need of advertising their potential via mini-pupillages. It was even suggested that such a change would encourage “elitist” selection.

View of the Working Group

While it is obviously highly desirable that candidates should know whether they have pupillage before they are financially committed to a BVC course, we are not persuaded that the way to achieve this is by bringing forward the timetable. Our research suggests that no BVC provider currently requires a commitment to pay the fees for the coming year before the current offer date. What many if not all require is a deposit which is intended to reflect the administrative costs of processing applications. Obviously it would be ideal if even this did not have to be paid before the pupillage process was complete but we consider that is unrealistic. We are also concerned at the effect bringing forward the timetable might have on those who have not done law before a CPE course. They need as much time as they can get to obtain information about chambers and specialisations. They need time to seek mini-pupillages. As many candidates from disadvantaged and minority backgrounds are likely to have followed non-traditional educational pathways there is a danger that an early timetable could be discriminatory.

Conclusion

Therefore we recommend that the Bar Council explores with the BVC providers the possibility of delaying the necessary commitment to a deposit, or providing for its return in the event of a pupillage not being obtained. We also recommend that it should be a condition of accreditation that course fees should not be payable until a date after the pupillage season has closed. It follows that the timetable should continue to follow broadly that of the current summer season.

Should the timetable accommodate applications more than one year in advance of the commencement of pupillage?

At present there is no restriction on how far in advance a pupillage offer can be made. While most pupillages are offered approximately one year in advance of the intended start date, some are offered a longer period in advance. Thus it is not uncommon for pupillages to be offered to final year university students. There may also be a smaller group of candidates who are offered pupillage deferred for one year after the completion of the BVC, where, for example the candidate wishes to complete a postgraduate degree.

Some members of the Working Party were inclined to recommend that offers of pupillage one year before the commencement of the BVC course should be banned as it was suspected that such selection was discriminatory. However, this was not an issue on which there has been consultation, and arguably it does not fall within our remit.

We recommend that the Training for the Bar Committee and Equality and Diversity Committee consider this point and make recommendations to the BSB.

While the precise dates for the timetable should be kept under review, in the first instance we recommend that they should be as follows:

- The date in each year by which pupillages to start in or later than September of the following year should be advertised in each year (the Advertising date) should be 1st December
- The date before which no offer of pupillage should be made (the Offer date) should be no earlier than the beginning of July in the year following the Advertising date
- The Offer date should be set each year and should, so far as possible precede the date on which BVC providers require substantial financial commitment for the BVC course
- The period during which offers may be accepted (the Offer period) should be 7 days following the Offer date

Membership of OLPAS

A large majority of respondents opposed making membership of OLPAS compulsory. Reasons cited included all those deployed against a common and compulsory timetable, and also that it would restrict freedom of choice in the type of selection procedure employed. Many complained about the format of the OLPAS form.

On reflection the Working Group consider that the case for requiring membership of OLPAS is less compelling than that for a common and compulsory timetable. Chambers are permitted to adopt different selection procedures which they perceive suit their own needs and specialisations. The concerns about ensuring a level playing field revolve around giving all candidates the maximum choice of vacancies simultaneously and all chambers the maximum choice of candidates. Those concerns are met by a common and compulsory timetable and forced membership of OLPAS is not required for this purpose. Many of the concerns expressed about OLPAS and the service provided are, we believe, justified. We consider that if OLPAS can be improved to take account of these concerns an increased number of chambers will wish to take advantage of the administrative convenience offered.

Conclusion

The Working Party recommends that membership of OLPAS remains voluntary, but that this position be kept under review by the Training for the Bar Committee.

Clearing House

Under the present system of pupillage selection it is possible for a vacancy to remain unfilled because all the candidates deemed suitable by chambers have accepted a competing offer. Equally chambers may find that they have room, resources or the need for additional pupils after the timetable for a particular year has started. At the moment there is no easy way for candidates to identify chambers which have such vacancies or for chambers to identify available candidates. Chambers are likely to be reluctant to advertise vacancies for fear of being deluged with an unmanageable number of applications.

While no figures are available it is likely that the number of vacancies available at the end of the normal pupillage selection process will be relatively small, while the number of candidates who have failed to obtain a place will be large. Chambers with vacancies will be tempted to leave them unfilled if they fear that they will be challenged by the corresponding administrative burden. Likewise chambers considering on reflection that

they might be able to take on additional pupils will be deterred from doing so by the same considerations.

Clearly it is undesirable that any potential pupillage vacancies are left unfilled. The Bar must do what it can to minimise this and to ensure that access to such vacancies is facilitated.

So long as there are vacancies unfilled by the initial selection process, the working group takes the view that it is clearly desirable for OLPAS to include a clearing house service, to operate after the conclusion of the common timetable for a specified time. If as we have recommended, there is to be a compulsory common timetable for pupillage selection, the period for the operation of a clearing house will have to be limited to prevent it being used to circumvent the requirements of the common timetable. In order to minimise the deterrent effect caused by the likely large numbers of candidates seeking a relatively small number of vacancies, the clearing process needs to be driven by chambers reviewing the pool of candidates as opposed to candidates applying to chambers. To encourage or allow the candidates to apply direct to all chambers would risk overwhelming chambers administrations and discouraging them for participating in the scheme.

The scheme we envisage would work as follows:

- Candidates already in OLPAS who had not been accepted for a pupillage by the close of the offer period would be invited to indicate electronically whether they wished to be placed in the clearing house pool.
- Such candidates would be entitled to revise their expressed preferences for areas of practice. They would also be able to nominate up to, say, 12 pupillage providers by whom they would like to be considered.
- Candidates who had not participated in OLPAS that year would be able to register for the pool by completing the OLPAS registration form.
- No candidate who had already received an offer of pupillage which they had accepted should be entitled to participate in the clearing house, and all candidates registering for the clearing house should be required to make a declaration that they had not been offered a pupillage which they had accepted.
- In addition to pupillage providers already in OLPAS, non-OLPAS members would be able to participate in the clearing house by electronic registration and payment of the membership fee. [see below]
- Pupillage providers who were already members of OLPAS would be able to register electronically for the clearing house as a benefit of their membership without additional charge.
- All participating providers would be required to record the number of vacancies available for clearing house candidates and the terms of the pupillage [start date, length, size of award etc]. Providers would be obliged to identify vacancies not previously available during the normal selection season. This fact would be indicated on the list referred to below. No other form of advertising of such a new vacancy would be required for the purpose of seeking applicants through the clearing house.

- The OLPAS site would contain a list of all chambers participating in the clearing house accessible to all candidates, and make the data in relation to all participating candidates accessible to the participating providers.
- The working group discussed at length what, if any search facilities should be provided for providers. It was suggested that advanced searching technology could be incorporated in the site enabling providers to search by reference to, for example, degree grades, A level grades, or perhaps some overall academic scoring system. Great care would need to be taken by the Bar Council in devising any such search facility on the site to ensure that it was not unwittingly giving the appearance of condoning unlawful discrimination. Therefore the group was very hesitant to recommend such a facility. There was greater enthusiasm for an “open” search facility, namely one allowing providers to search in accordance with their own individually devised criteria, which, as they should be reminded, would have to comply with Bar Council and statutory requirements with regard to discrimination. However, subject to specialist legal advice some sort of filtering by reference to expressed interest in work areas or chambers, and, possibly, by reference to academic achievement, might possibly be made available. Providers should not be limited to searching among candidates who had expressed an interest in them.
- Having identified candidates of interest to them, providers could then implement whatever selection processes they see fit, such as interviews or other forms of assessment.
- Unlike the common timetable, there would be no offer period as such: providers would be free to make offers to candidates at any time during the clearing house period, and be entitled to expect a rapid response from candidates. However it might be reasonable to require providers making offers to allow a period of at least 24 hours from the receipt of the offer for it to be accepted.
- The clearing house should be open for a defined period. This would be in the interests of candidates who require certainty while planning the year ahead, and for chambers who need to plan their training programmes, and be free for a time of the burdens of selection. If the common timetable is to be made compulsory, a defined period would also be required to prevent the requirements of that timetable being circumvented. It is suggested that the clearing house could remain open for one month starting two weeks after the close of the common timetable in any one year. The two week gap would enable registration of candidates and vacancies to be completed. It is suggested that providing chambers two opportunities each year in which to decide whether to offer a pupillage vacancy provides sufficient flexibility to encourage them to review their requirements and offer “new” places if their circumstances permit. In the case of a new vacancy declared for the clearing house, chambers could decide to offer a new place at very short notice.
- The working of the scheme should be reviewed annually.
- The precise mechanics of the system will need to be considered in the light of the IT resources available.

Conclusion

The Working Group recommends that at the earliest opportunity a clearing house facility be added to the OLPAS system in accordance with the principles set out above.

Charges for OLPAS

At present, those pupillage providers using the OLPAS system pay an administration fee, as well as an advertising charge for adverts placed in the associated Pupillage Handbook. Candidates are not required to make any payment for use of the OLPAS system.

The overwhelming view expressed in the response to the consultation paper was that students should not be charged for use of this facility.

The working group considered that there was no case for charging students for use of the OLPAS system and that to do so might discourage them from using it. It also thought that new pupillage providers joining the OLPAS clearing system should be required to pay the same fee as an incentive to join the system from the outset. The justification for keeping the charge constant would be that those who have obtained pupillage or filled their vacancies at the outset are unlikely to demand a rebate, on account of their non use of clearing. Therefore why should those who choose to enter the system late have the right to a reduced fee, just because they have not benefited from the initial process?

Conclusion

In principle the Working Group does not consider it right that candidates should be expected to bear the administrative costs of the recruitment system. It was firmly of the view that providers entering OLPAS at the clearing house stage should pay the same fee as other members who have joined earlier. Therefore should a clearing house be introduced to the present system charging should be in accordance with these principles. However, the financing of the system will require review in any event after the arrangements for providing the web based facility have been reviewed. The group therefore recommends that the question of charges be reviewed in the light any change in facility that results from this review.

Summary of recommendations

The Group recommends:

1. (by a majority) There be a common and compulsory timetable covering the offer of pupillage vacancies intended to commence at some time during the two years following the year of selection and the Bar Standards Board should be invited to take the relevant steps to implement it.
2. If recommendation 1 is accepted, the Bar Standards Board should also be invited to amend the Code of Conduct to provide for a sanction for breach of the timetable requirements, for which the head of chambers and any member involved in the breach should be accountable.
3. The timetable should only have one season each year.
4. The dates of timetable should include an Advertising date, an Offer date, and an Offer period in accordance with the principles set out above.

5. The Bar Council should explore negotiated ways of reducing and delaying the financial commitment imposed by BVC providers.
6. There should be a clearing house with the features recommended above.
7. Organisations offering employed pupillages shall not be required to comply with the common timetable in respect of pupillages for which they are exempted from the pupillage advertising requirements.
8. Before implementing the regulatory changes necessary legal advice on the lawfulness of the proposed restriction should be taken.
9. The financing of the pupillage selection system should be reconsidered once the system has been defined.

OLPAS Rules Working Group
3 September 2007

APPENDIX 1 TO OLPAS REPORT



THE GENERAL COUNCIL OF THE BAR

TRAINING FOR THE BAR COMMITTEE

REVIEW OF OLPAS RULES AND BVC ONLINE

CONSULTATION PAPER

Introduction

Before the implementation of the structural changes consequent on the Clementi review, the Recruitment & Entry Sub-Committee of the Education & Training Committee formed working groups to review the rules governing the On-Line Pupillage Application System (OLPAS) and also the on-line service provided for OLPAS applicants and BVC applicants (BVC Online). The work undertaken by these groups is now being taken forward by the Training for the Bar Committee. In order to inform the further work on this subject the Committee would like to ascertain the views of the Bar in general and OLPAS users in particular on a number of issues which require to be resolved before detailed improvements can be made. **The questions on which views are requested appear at the end of this paper and responses are requested by 31st October 2006. All responses should be sent to Bhavna Patel, Bar Council, 289 High Holborn, London WC1V 7HZ**

This paper is an updated version of the Report of the OLPAS Rules Working Group, chaired by Peter Hughes QC, modified to incorporate issues raised by the Online Systems Review Technical Working Party chaired by Christopher Moore. The membership of both groups is set out in Appendix A. This consultation is concerned principally with OLPAS and how it can be improved, and the funding of both OLPAS and BVC Online, but not the provision of the on-line system as such.

The Present System

The present OLPAS system is entirely voluntary. Chambers outside OLPAS are free to devise their own application procedures and timetable, although the Bar Council expects chambers to adopt the common pupillage timetable whether in OLPAS or not. The current rules are set out in Appendix B, and the detail of this year's timetable at Appendix C.

In OLPAS there are, currently, 2 seasons for applications –
 Summer – 4th March – 2nd May 2006
 (offer date – 31st July)
 Autumn – 29th August – 29th September 2006
 (offer date – 31st October)

Chambers opt for whichever season best suits their recruiting plans. The period for chambers to process applications is one month in the Autumn season compared with three months in the Summer. Applicants can apply to a maximum of 12 OLPAS chambers in each season. All applications are made on line in a common application form. All communications should be made through OLPAS. These include interview invitations and pupillage offers. All offers should be made on line on the offer date. Successful applicants then have 14 days in which to decide whether or not to accept.

Which Chambers use OLPAS?

The Working Group obtained information on the membership of OLPAS and the benefit of an admittedly unscientific survey of the membership. The geographical division between members and non-members and the seasons members adopt are shown in Appendix 4. The present system is widely used and accepted. It simplifies the application process, and reduces the burden on applicants and chambers alike. Most chambers in London are in the system. Many large and commercially successful chambers are members. The take up appears less with some smaller or specialist sets. Outside London there are, though, significant provincial variations. This can be seen from the tables in Appendix D.

Why do sets choose to join OLPAS?

A survey was conducted in 2005.⁶⁸ It would not be helpful to burden consultees with the full results of this, but it appeared that the main factors that respondents who were members of OLPAS liked were:

- A common application form
- A common timetable
- The availability of on-line reports
- Saving of time with bulk e-mails and printing facilities
- Reduction in the chambers administrative burden
- Limit on number of applications a candidate could make
- Reduction in costs

BVC students were also asked what were the best features of OLPAS for them. The most significant features for them were:

- Common application form
- Ease of use [over 72% found it very or fairly easy to use; over 89% thought the system was at least adequate, 53% thinking it was good]
- Good list of chambers and links

Why do sets choose not to join OLPAS?

Chambers that choose to be outside the system, appear to do so for a variety of reasons –

- Flexibility;
- The ability to devise their own application form and selection procedure;

⁶⁸ Chambers were sent a questionnaire: 50 OLPAS sets and 6 ex-OLPAS sets responded. A different questionnaire was sent to BVC students: 428 responses were received.

- The wish not to be part of an on-line system;
- The belief that they can recruit the best candidates by staying outside.

What criticisms are made about OLPAS?

The survey asked respondents for their criticisms. Many of these were matters of detail, but the broad categories of discontent of chambers can be summarised in no particular order as follows:

- Vulnerability to best candidates being taken by non-OLPAS sets
- Lack of a reserve list of candidates
- Content and rigidity of the application form
- Too many applicants
- System slow/cumbersome
- Lack of database analytical and filtering functions for chambers

Students' principal criticisms were:

- Restrictive nature of application form
- Communications with chambers not always used
- Limit on number of applications

The issues

The review group were asked to consider the workings of the present system and to make any recommendations for change that they consider appropriate. They were not asked to conduct any consultation themselves but felt that it was necessary before significant changes were contemplated. The group noted that review of the present system takes place against the background of the Calvert Smith Report on Entry into the Bar. This recognised the need to promote diversity and equality of opportunity for all those seeking to join the profession. The group focussed on the following general issues

1. Should OLPAS continue to be voluntary, or should it be made compulsory?
2. Should any changes be made to the present timetable?
3. If so, what are the options?
4. Should there be any penalty for breaking the rules?
5. Should any changes be made in the present application form?

The review group's conclusions

1. Should OLPAS and the timetable be voluntary or compulsory?

The present system is widely used and accepted. It simplifies the application process, and reduces the burden on applicants and chambers alike. The group took as a starting point the assumption that the system should be retained and improved, if possible.

The group considered whether to recommend that it should be made compulsory. The arguments in favour of a universal and compulsory system are -

- A uniform system across the Bar would promote equality of opportunity and treatment;

- It would simplify for applicants, access to information as to vacancies;
- It would streamline the application procedure and end the need for candidates to make a multiplicity of applications;
- It could involve a common timetable;
- This would enable successful candidates to consider all offers against each other;
- It would be easier to police, monitor, and enforce;
- It would prevent chambers from trying to “get in first” and cream off the best candidates.
- As in future all applicants must register with the Bar Council, and pupillage can only be offered to registered candidates, a uniform application process would be a logical further step.

The arguments against appear to be –

- It restricts freedom of choice;
- It stops chambers devising the application process that suits them best;
- Even if appropriate for London, it may not be appropriate for provincial applicants and chambers, where local factors may be important;
- It may be seen as a restraint on competition.

If a uniform and compulsory system were to be introduced, the group believed that

- It must command widespread support and acceptance;
- It must not restrict the Bar’s ability to compete with Solicitors to attract the most able candidates.

The options appeared to the group to be –

- To introduce a universal compulsory system;
- To allow OLPAS to continue to operate as at present, and chambers to opt in or out as they see fit and to devise their own procedures;
- To introduce a common set of procedural rules and timetable but to allow chambers which do not wish to participate in OLPAS to adopt their own application procedures.

Calvert Smith recommended that chambers and pupillage training organisations should be encouraged to adopt a pupillage recruitment timetable that enables those who have not commenced the BVC to know the outcome of interviews before commencement [para 6.3, 6.4]. The reasoning for this is that potential applicants from less advantaged backgrounds are more likely to be discouraged from proceeding with a career at the Bar because of the substantial outlay involved.

The group doubted whether this recommendation could, satisfactorily, be implemented by encouragement alone. Part of the reason why some chambers choose to be outside OLPAS, and to use a different timetable, is to try and gain some advantage and attract the best candidates. Few applicants, at present, are successful in obtaining pupillage before the BVC. To achieve the objective of matching applicants to pupillage vacancies before they make the financial commitment to enrol on the BVC, would, in the group’s view, require consistency of approach, which could only be achieved by adopting a common timetable.

Therefore the group recommended the introduction of a common timetable, to be followed by all sets of chambers, whether in or out of OLPAS. They also recommended that other pupillage training organisations, over which the Bar Council does not have jurisdiction, should be invited to adopt the same timetable.

If a common timetable is introduced, it can be argued that it would make sense to take the further step of making OLPAS compulsory. The pros and cons on this appeared to the group to be more finely balanced. An alternative might be to require chambers who wish to adopt their own application procedure to obtain approval from the Bar Council for their own system and to opt out of OLPAS. This would have two advantages. It would lend support to the use of OLPAS, and secondly it would provide a means of ensuring that opting out chambers had fair and compatible application procedures.

In summary, the group recommended –

- (i) that a common timetable to be followed by all chambers be introduced, and*
- (ii) that either participation in OLPAS be made universal and compulsory, or chambers be allowed to opt out of OLPAS but subject to approval of their own application procedure by the Bar Council*
- (iii) Before any changes are implemented there should be consultation with the profession and pupillage applicants*

2. Should any changes be made to the present timetable?

The two season timetable was originally introduced

- To provide chambers and applicants with greater flexibility;
- Because of a lack of agreement as to one annual season.

The overwhelming majority of chambers in OLPAS now favour the Summer season (see table). There appears to have been a gradual move towards the Summer season. This is supported by the widening gap between the number of Summer and Autumn applications. There is no clear picture as to why some sets still opt for the Autumn season. There is some suggestion that it may be favoured by smaller sets, particularly out of London, who feel at a disadvantage competing in the larger Summer season, and who feel that they get the opportunity to consider applicants, who might otherwise not have applied to them.

There have been complaints from some students that the division into seasons makes it difficult for them to apply to all their chambers of choice, and also that the imbalance between chambers opting for the Autumn as opposed to the Summer season means that the current limits on the number of applications they can make is unfair.

The review group favoured the abandonment of the Autumn season –

- It does not further the Calvert Smith objective of recruitment before the BVC;
- It follows too closely on the heels of the Summer season;
- It is, arguably, developing into a “Second Division season”.

The possible options seem to be –

- A continuous process without any open or closed seasons
- A second season but at a different time of year.
- One annual round with a timetable that helps to meet the Calvert-Smith objective

The review group emphatically rejected the first option. A continuous process would not be compatible with a common timetable. It would be unduly onerous both for chambers and candidates. Unless chambers were allowed to have their own opening and closing dates for applications, the burden on pupillage selection committees would be unacceptable. A multiplicity of dates would be confusing for candidates. It could lead to chambers playing leapfrog to be at the front of the queue. It would prevent candidates from considering offers together, and would be difficult to monitor.

It was thought there was little to be gained by introducing a second season at some other time of year, and it would be open to the same objections as the present system.

The review group favoured one annual round. The Calvert Smith recommendation was that pupillage offers should be made before BVC enrolment. Students, though, are required to apply and make a financial commitment by payment of a non-refundable deposit or part payment of fees much earlier than the offer date for the present Summer season. The BVC on line offers date, currently, is the 6th March.

Such a change in the system would provide the opportunity to reschedule the timetable. In addition it ought to be possible to incorporate a clearing house system to match unsuccessful candidates to remaining vacancies. This would help to address the concerns of some chambers that prefer to use the Autumn season.

The application process would have to start much earlier in the academic year than at present. Pupillage fairs that currently take place mainly in the Spring would have to be moved to before Christmas. It does mean that chambers considering BVC candidates would not be able to take account of Bar Final results.

A possible timetable could be

Applications – 6 weeks from 1st December

Selection process and interviews – mid January – beginning March

Offers – 1st week March

Clearing House offers – mid March

The introduction of a common timetable along these lines would be easy to understand and follow. It would promote consistency of approach and equality of treatment. It would also be consistent with the objective identified by the Calvert Smith report. Whilst a common timetable could be introduced without making OLPAS compulsory, if a clearing house scheme were introduced, it would be available only to chambers in OLPAS.

In summary the review group recommended:

- i) the Autumn season should be abandoned*
- ii) there should be one season each year*
- iii) that season should so far as possible be timed to enable students to know whether they have pupillage before committing themselves to a BVC place*

3. Should there be any penalty for breaking the rules?

Members of OLPAS are expected to comply with the rules of the system, although there are countless stories of chambers trying to circumvent the timetable by making “unofficial indications” before the offer date, or pressing candidates for an answer before the 14-day deadline. Outside OLPAS chambers are, within reason, free to do what they like. It seemed to the review group that there can be no logic in introducing a common timetable or requiring chambers to follow an approved procedure, without introducing sanctions for those who break the rules. The obvious sanction is to make it a requirement of the Code of Conduct for all barristers involved in the processing of pupillage applications to comply with the rules, and to impose a duty on Heads of Chambers to ensure compliance.

The review group recommended amendment of the Code of Conduct to this effect. An alternative might be to impose a condition on the registration of pupil supervisors to the same effect

4. The application form

The review group through the survey and other sources was made aware of a number of criticisms of the present form:

- It is too focused on academic and legal achievements and experience.
- It does not provide applicants with sufficient scope for self expression and self assessment; in other words to try and sell themselves.
- It does not allow applicants to incorporate “chambers specific” information, which they might wish to include in applying to some chambers but not others – for example applications to provincial sets or specialist chambers. At present there is a small box for such information but it is inadequate for the purpose.

The group felt that there is substance in these criticisms, and recommended that consideration be given to allowing applicants more scope for self assessment, and incorporating a larger section in which applicants can say why they are applying to each of their chosen chambers, which will be sent only to the chambers to which the comments relate.

The group will continue detailed work on this under the auspices of the Training for the Bar Committee.

5. Funding of OLPAS and BVC On-line

OLPAS is currently funded by a charge (which may include an enhanced charge for additional handbook entries) levied on the participating pupillage providers by the supplier of the system, and is free of charge to student applicants. On the other hand students are charged a fee (currently £40) to make an application on BVC Online. BVC providers do not contribute to the funding, but presumably, if they did, this would be likely to be passed on to applicants. In the context of a review of what the Bar requires out of OLPAS it seems appropriate to review the arrangements for funding the service. There are a number of ways in which both systems might be funded, and the Committee would be grateful to have the views of the profession and students on the options that appear in the questions for consultation below.

6. Questions for consultation

The Training for the Bar Committee has agreed that the issues raised above require consultation before it seeks to implement relevant changes in OLPAS and BVC Online and makes recommendations for regulatory amendments to the Bar Standards Board. The Committee therefore requests consultees to answer the following questions:

OLPAS

1. *Should a common timetable for pupillage applications to be followed by all chambers be introduced?*
2. *Should participation in OLPAS be made universal and compulsory?*
3. *If participation in OLPAS is to remain voluntary should the application procedure of each chambers be required to be approved by the Bar Council?*

Common timetable

4. *Should the Autumn season be abandoned?*
5. *Should there be only one season each year?*
6. *Should, so far as possible, the timetable enable students to know whether they have pupillage before committing themselves to a BVC place?*

Sanctions

7. *Should there be a sanction for breach of the common timetable?*
8. *If so, should the sanction be under the Code of Conduct or some other, and, if so what, means?*
9. *Should there be a sanction for breach by participating pupillage providers of the selection procedure required by the OLPAS rules?*
10. *If so, should the sanction be under the Code of Conduct or some other, and, if so what, means?*

Funding

OLPAS

11. *Would it be appropriate to consider charging applicants?*
12. *If OLPAS were to remain voluntary should the costs be borne by the participating pupillage providers or the Bar as a whole via subscriptions?*

BVC Online

13. Is it appropriate that students should be charged for making an application?
14. If so, is £40 reasonable?
15. Should BVC providers be expected to fund the system in whole or in part?
1. Would it be appropriate for the Bar, through subscriptions to contribute to the funding of this system?

August 2006

DUNCAN MATTHEWS QC (Chair, Training for the Bar Committee)

ROBERT FRANCIS QC (Chair Recruitment & Entry Sub-Committee)

PETER HUGHES QC (Chair, OLPAS Rules Review Group)

CHRISTOPHER MOORE (Chair Online Systems Technical Working Party)

APPENDIX A

**MEMBERS OF OLPAS RULES REVIEW GROUP AND ONLINE SYSTEMS
REVIEW TECHNICAL WORKING PARTY**

OLPAS RULES REVIEW GROUP

Peter Hughes QC [Chair]

Nadia Motraghi

Philip Moser

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ONLINE SYSTEMS REVIEW TECHNICAL WORKING PARTY

Christopher Moore [Chair]

Tor Butler-Cole

Mark Engelman

Chris Fowler

Clive Freedman

Jonathan Gavaghan

Roger Horne

Diana Newcombe

Robert Onslow

Kate Thornton

APPENDIX B

OLPAS RULES 2006

- (1) In this recruitment year, Pupillage Providers may recruit pupils through OLPAS for pupillages commencing between Autumn 2006 and Easter 2008 ('relevant pupillages').
- (2) In each recruitment year, there shall be two recruitment seasons:

Summer - application closing date midnight on 2 May; offer date midnight on 31 July;
Autumn - application closing date midnight on 29 September; offer date midnight on 31 October.

All applications must be submitted to Pupillage Providers by midnight at the end of the application closing day.
- (3) OLPAS Pupillage Providers shall be under no obligation to consider applications submitted after the applicable application closing date.
- (4) No offer of a relevant pupillage may be made before the applicable offer date. (At any time after the applicable application closing date, OLPAS Pupillage Providers may submit offers to OLPAS for communication to applicants. Offers so submitted prior to the offer date shall be stored by OLPAS and transmitted to applicants on the offer date.)
- (5) Each Pupillage Provider must specify when first registering to recruit through OLPAS and thereafter by 31 January in each recruitment year whether it opts to recruit in the Summer or in the Autumn recruitment season in that recruitment year. Each Pupillage Provider opting to recruit in the Summer recruitment season of any recruitment year may opt to recruit also in the Autumn season by notifying OLPAS of its desire to do so by 9 September of that year.
- (6) Every offer of pupillage through OLPAS shall specify a number of days (always at least 14) following the making of the offer within which the offer will be open for acceptance.
- (7) No OLPAS Pupillage Provider may make any offer of pupillage except through OLPAS and in accordance with the above Rules (1) to (6), save for offers made otherwise than through OLPAS between 1 January and 2 May in any recruitment year for pupillages commencing not later than Easter of the following year.
- (8) No applicant may apply to more than 12 Pupillage Providers in any OLPAS season.

APPENDIX C

OLPAS TIMETABLE 2006

The OLPAS timetable for 2006 is as follows:

- OLPAS opened on 4 March 2006.
- Candidates may apply for pupillage one or two years ahead depending on how close they are to completing the academic stage. For example, candidates who are completing the second or penultimate year of their law degree, or candidates about to embark on a conversion course may apply only to those chambers that offer pupillages two years ahead i.e. 2008/2009. Candidates who are in their final year of the qualifying law degree or the CPE may apply to chambers offering pupillage one or two years ahead i.e. 2007/2008 or 2008/2009.
- Candidates may apply to up to 12 pupillage providers in each season.
- Applications for the Summer season may be made from 4 March.
- The deadline for submission of Summer season applications is 11:59pm on 2 May.
- Offers may be made to Summer season applicants from 11:59pm on 31 July.
- Applications for the Autumn season may be made from 29 August.
- The deadline for submission of Autumn season applications is 11:59pm on 29 September.
- Offers may be made to Autumn season applicants from 11:59pm on 31 October.

In addition, the Bar Council has agreed that all Pupillage Providers should abide by a common timetable:

- No offers can be made in the period 3 May to 31 July.
- No offers can be made before midnight on 31 July in an applicant's penultimate undergraduate year.
- All offers must remain open for at least 14 days.

APPENDIX D

Breakdown of Chambers using OLPAS based on Handbook⁶⁹

Town	No	In	Out	Summer/Autumn
Birmingham	6	0	6	
Bradford	1	1	0	Summer
Brighton	1	1	0	“
Bristol	5	3	2	“
Cambridge	1	1	0	“
Cardiff	4	2	2	“
Chelmsford	1	0	1	
Chester	3	0	3	
Durham	1	0	1	
Exeter	3	2	1	1 Summer 1 Autumn
Leeds	7	4	3	Summer
Leicester	2	1	1	Autumn
Lewes	1	0	1	
Liverpool	5	3	1	Autumn
London	141	102	39	88 Summer 14 Autumn
Manchester	12	7	5	4 Summer 3 Autumn
Middlesbrough	2	0	2	
Newcastle	4	1	3	Summer
Northampton	2	1	1	“
Nottingham	3	3	0	“
Oxford	1	1	0	“
Peterborough	1	1	0	“
Preston	1	1	0	“
Sheffield	2	1	1	“
Southampton	3	0	3	
Swansea	2	2	0	1 Summer 1 Autumn
Winchester	1	1	0	Summer
York	1	0	1	
	217	139	77	

⁶⁹ This table was prepared for the working group and included in its report. It was based on information available to the Bar Council in 2004. In view of some chambers participating in both the summer and autumn seasons, and others having more than one entry, complete accuracy in the figures is not possible.

2006 Breakdown of Chambers using OLPAS⁷⁰

Town	No	In	Summer	Autumn	Out
Birmingham	4				4
Bradford	3	1	1		2
Brighton	0				
Bristol	5	3	2	1	2
Cambridge	0				
Canterbury	1				1
Cardiff	4	2	2		2
Chelmsford	0				
Chester	2				2
Chichester	1				1
Durham	0				
Eastbourne	1				1
Exeter	2	1	1		1
Ipswich	1				1
Leeds	6	3	3		3
Leicester	2	1		1	1
Lewes	1				1
Liverpool	6	3	2	1	3
London	139	93	88	5	46
Manchester	10	6	3	3	4
Middlesborough	2				2
Newcastle	3	2	2		1
Northampton	2	1	1		1
Nottingham	3	2	2		1
Oxford	0				
Peterborough	1	1	1		
Plymouth	1	1	1		
Preston	0				
Salford	1				1
Sheffield	1				1
Southampton	3				3
Swansea	2	2	1	1	
Winchester	0				
York	1				1
Total	208	122	110	12	86

⁷⁰ The figures are derived from the list of chambers apparently offering pupillages on the OLPAS website as at 5 June 2006. The numbers will not therefore correspond with the overall number of chambers. There is also the possibility of confusion because some sets have more than one entry, and a few offer vacancies on both the Summer and Autumn seasons. Therefore reliable comparison with the working group's original table is not possible.

APPENDIX 2

OLPAS AND BVC ONLINE CONSULTATION PAPER:
NUMERICAL ANALYSIS OF RESPONSES

A total of 75 responses were received

OLPAS

1. *Should a common timetable for pupillage applications to be followed by all chambers be introduced?*
53 For, 19 Against
2. *Should participation in OLPAS be made universal and compulsory?*
18 For, 54 Against
3. *If participation in OLPAS is to remain voluntary should the application procedure of each chambers be required to be approved by the Bar Council?*
28 For, 38 Against

Common timetable

4. *Should the Autumn season be abandoned?*
42 For, 21 Against
5. *Should there be only one season each year?*
44 For, 21 Against
6. *Should, so far as possible, the timetable enable students to know whether they have pupillage before committing themselves to a BVC place?*
51 For, 17 Against

Sanctions

7. *Should there be a sanction for breach of the common timetable?*
47 For, 19 Against
8. *If so, should the sanction be under the Code of Conduct or some other, and, if so what, means?*
43 For, 14 Against
9. *Should there be a sanction for breach by participating pupillage providers of the selection procedure required by the OLPAS rules?*
46 For, 16 Against

10. *If so, should the sanction be under the Code of Conduct or some other, and, if so what, means?*
38 For, 15 Against

Funding

OLPAS

11. *Would it be appropriate to consider charging applicants?*
6 For, 61 Against
12. *If OLPAS were to remain voluntary should the costs be borne by the participating pupillage providers or the Bar as a whole via subscriptions?*
45 think it should be the participating pupillage providers, 16 think it should be the Bar and 2 stated 'No'

BVC Online

13. *Is it appropriate that students should be charged for making an application?*
16 For, 47 Against
14. *If so, is £40 reasonable?*
17 For, 39 Against
15. *Should BVC providers be expected to fund the system in whole or in part?*
41 think it should be funded in whole, 9 think in part, 3 stated 'Yes' and 4 stated 'No'
16. *Would it be appropriate for the Bar, through subscriptions to contribute to the funding of this system?*
15 For, 44 Against

ANNEX 3***SUMMARY OF RESPONSES*****SHOULD THE BAR COUNCIL REGULATE CHAMBERS RECRUITMENT WHETHER BY COMMON TIMETABLE, OLPAS OR OTHERWISE?**

Most respondents within OLPAS favoured a compulsory common timetable so as to create a level playing field. All respondents outside OLPAS were against a compulsory timetable for a variety of reasons set out below.

Two Bar associations (Family Law Bar Association and Common Law and Commercial Bar Association, together with 4 Pump Court with whose strongly felt submissions several other chambers associated themselves), raised the point that, in recruiting pupils, chambers were not performing a public service, and therefore the Bar Council had no place in regulating recruitment beyond the existing anti-discrimatory obligations already in place in the Code of Conduct.

Some respondents e.g. Lincolns Inn and the Intellectual Property Bar Association, were of the view that regulation would also be justified on the grounds of presenting to the public a more “ordered” recruitment process.

Further, it was noted by some respondents that, because applicants tend to accept the first offer made, the absence of a common timetable reduces choice for the applicant⁷¹.

COMPULSORY TIMETABLE – COUNTERARGUMENTS

The following counterarguments have been identified:

- (a) it reduces flexibility in the recruitment process⁷²;
- (b) its effect on the employed bar are unascertained⁷³;
- (c) since it regulates a voluntary process, it may cause fewer pupillages to be offered⁷⁴;
- (d) not appropriate where other pupillage providers are not subject to the same timetable⁷⁵;
- (e) there is no compulsion in equivalent professions⁷⁶;
- (f) it will cause loss of applicants to solicitors⁷⁷, an objection which may be illusory if the desire to be a barrister is a true vocation⁷⁸;

⁷¹ Hardwicke, 29 Bedford Row, Brick Court, Jody Adkinson, 1 Hare Court, Unity Street Chambers.

⁷² Lincolns Inn, Anon 9.10/2006, Maitland, Samantha Davies, Pump Court Tax Chambers.

⁷³ Lincolns Inn, Employed Barristers Association.

⁷⁴ Unity Street Chambers.

⁷⁵ 4 Pump Court.

⁷⁶ 4 Pump Court.

⁷⁷ Lincolns Inn, Family Law Bar Association.

- (g) it is not appropriate for small sets⁷⁹, specialist sets⁸⁰ nor for big sets and rich sets⁸¹;
- (h) it is inappropriate unless its date is pre-BVC⁸², and inappropriate unless its date is post-BVC⁸³

COMPULSORY TIMETABLE – SHOULD THERE BE SANCTIONS?

Most respondents favoured sanctions in order to enforce compliance, on the basis that voluntary compliance would not work. There was a concern that sanctions would be ineffectual because pupils would not generally complain, or would more likely complain to the Inn⁸⁴. On the other hand there was a perceived risk by other respondents of vexatious complaints⁸⁵. Sanctions applied with a light touch, directed at real unfairness only were recommended⁸⁶.

COMPULSORY TIMETABLE – IF SANCTIONS, THEN WHAT SANCTIONS?

The options raised by the responses were:

- (a) disciplinary proceedings under the Code of Conduct;
- (b) banning offender from taking pupils for a period⁸⁷;
- (c) invalidating the resulting pupillage⁸⁸;
- (d) naming and shaming⁸⁹;
- (e) requiring offender to submit procedure to scrutiny⁹⁰ - but potentially an illegitimate use of scrutiny procedure;
- (f) invalidate the acceptance, thereby leaving the offender at risk of losing the pupil to a later offer⁹¹.

⁷⁸ City University.

⁷⁹ 7 New Square, Unity Street Chambers, South Eastern Circuit.

⁸⁰ 7 New Square.

⁸¹ Unity Street Chambers.

⁸² Wilberforce.

⁸³ Blackstone, City University, COMBAR, Fountain Court.

⁸⁴ Anon received 23/8/2006.

⁸⁵ Fountain Court.

⁸⁶ 1 Essex Court.

⁸⁷ 1 Hare Court.

⁸⁸ 11 Stone Buildings.

⁸⁹ South Eastern Circuit, Anon 9/10/2006.

⁹⁰ 3 Raymond Buildings.

⁹¹ Pump Court Chambers.

COMMON TIMETABLE, ASSUMED COMPULSORY – SHOULD THE DATE BE MOVED BACK TO PRE-BVC?

The argument in favour of such a move was that an applicant should not have to incur the cost of BVC without knowing whether he/she has a pupillage.

The main argument against the move was that it prejudices CPE (i.e. non law graduates) because interviews would occur early in the course⁹², before the “penny had dropped” as to how the law actually worked⁹³.

Respondents further highlighted the following problems:

- (a) a need to know degree results⁹⁴;
- (b) a need to know BVC results⁹⁵;
- (c) it would encourage “paper applications” and CV building among applicants;
- (d) it deprives chambers of reliance on assessed mini-pupillages⁹⁶;
- (e) it discriminates against out of London applicants⁹⁷;
- (f) it is inconvenient for students⁹⁸;

The simple expedient of regulating the BVC courses, rather than chambers, were suggested in a number of cases⁹⁹.

COMPULSORY APPLICATION PROCEDURE/COMPULSORY OLPAS

There was very little support amongst respondents for this.

VETTING OF CHAMBERS APPLICATION PROCEDURE BY THE BAR COUNCIL

Chief in support was Inner Temple, the justification being proactive regulation. Against were the arguments of bureaucracy¹⁰⁰. The argument of equality and anti-discrimination

⁹² Blackstone, COMBAR, 11 KBW, Brick Court.

⁹³ Peter Land.

⁹⁴ Blackstone, COMBAR, City University, Fountain Court.

⁹⁵ Blackstone, City University.

⁹⁶ Blackstone, 1 Essex Court.

⁹⁷ Common Law and Commercial Bar Association.

⁹⁸ Brick Court.

⁹⁹ Blackstone, 1 Essex Court, 11 KBW.

¹⁰⁰ Falcon Chambers, Lincolns Inn.

was met with the point that regulations already exist in the Code of Conduct for dealing with these¹⁰¹.

REMOVAL OF THE AUGUST SEASON

The August season is a de facto clearing season¹⁰², but without the necessary flexibility of a clearing system. Provided it is replaced with a true clearing system¹⁰³, then there were no strong arguments in favour of its retention.

MINOR AMENDMENTS TO THE COMMON TIMETABLE AND OTHER SUGGESTIONS NOT RELEVANT TO OUR REPORT

Some respondents thought the 14 day acceptance was too long¹⁰⁴, one thought not¹⁰⁵. There was a proposal for a coordinated interview process for criminal sets¹⁰⁶, and perhaps controversially by Gray's Inn, a suggestion that there should be a cap on pupillage awards.

AMENDMENTS TO OLPAS

A number suggested a more open form of application¹⁰⁷. Several also mentioned the restriction on the number of applications to 12 as a bad thing.

It was suggested that the site should handle acceptance by the applicant, so as to notify to other chambers that the applicant will not accept¹⁰⁸ and a request was made for a system to feedback from interview to the applicant¹⁰⁹.

¹⁰¹ Ropewalk Chambers, COMBAR, 1 Essex Court.

¹⁰² 4-5 Grays Inn Square, 29 Bedford Row, Anon 9/1/2006.

¹⁰³ Young Barristers' Committee.

¹⁰⁴ Blackstone Chambers, Brick Court, 2 Paper Buildings.

¹⁰⁵ Charlotte KcKee.

¹⁰⁶ 3 Raymond Buildings.

¹⁰⁷ Outer Temple Chambers, Nottingham University, Charlotte McKee.

¹⁰⁸ Brick Court.

¹⁰⁹ Gray's Inn.

ANNEX 4

A selection of the timetables currently advertised by Non-OLPAS Chambers

Location of Chambers	Vacancies	Application Deadline	Offer Date	Pupillage Commences
Birmingham	1 x 12 Months Guaranteed, Guaranteed Earnings (£15000)	28 April 2007	No info.	November 2007
York	2 x 12 Months Guaranteed, Grant & Guaranteed Earnings (£20,000)	31 May 2007	No info.	September/October 2008
London	1 x 12 Months Guaranteed, Grant & Guaranteed Earnings (£10000), £5,000 in equal monthly instalments for the first six months. Guaranteed income of £5,000 for the second six months also in equal monthly instalments.	6 April 2007	No info.	No information
Birmingham	4 x 12 Months Guaranteed, Grant & Guaranteed Earnings (£35,000), £20,000 in 1st 6 months and £15,000 guaranteed in 2nd 6 months.	22 June 2007	No info.	2008
London	3 x 1st 6 Months, Grant (£19,000), £17,500 for each six month period	30 April 2007	No info.	October 2008 or April 2009
London	4 x 12 Months Guaranteed, Grant & Guaranteed Earnings (£37,500)	31 January 2008	No info.	October 2009
London	3 x 12 Months Guaranteed, Grant & Guaranteed Earnings (£35,000), of which £8,500 comprises	30 April 2007	The interviewing process will take place between late May and early July	Autumn 2008

	guaranteed second six earnings. Up to £10,000 may be drawn down during the BVC year		2007. We will endeavour to accommodate candidates' academic commitments during this period when calling candidates for interview. Chambers will make offers of pupillage to successful candidates immediately after 31st July 2007.	
London	4 x 12 Months Terminable, Grant (£35,000), We offer up to four 12-month pupillages, reviewable after six months. The award is £35,000 pa pro rata for each pupillage. Applications to advance part of the award during the BVC year are considered.	28 February 2007	No info.	No information
London	3 x 12 Months Guaranteed, Grant & Guaranteed Earnings (£38,000)	31 January 2007	No info.	October 2007
London	2 x 12 Months Terminable, Grant (£32,500), Two, or exceptionally three, 12 months, £32,500 grant plus earnings, apply by 27/03/07. At Chambers' discretion up to £5,000 of such award is available to draw down during Bar vocational course year	27 March 2007	No info.	October 2008
London	2 x 12 Months Terminable, Grant (£38,000), Two, 12-month pupillages	16 April 2007	No info.	October 2008

	(determinable after six months), grant £30,000 per 12-month pupillage. Applications to draw down part of the grant during the BVC year will be considered. Applications by 13/04/06.			
London	4 x 12 Months Guaranteed, Grant & Guaranteed Earnings (£12,000), Two, 12 months, £12,000 grant and guaranteed earnings	8 June 2007	No info.	2008
London	1 x 12 Months Guaranteed, Guaranteed Earnings (£12,000), £6,000 grant 1st six, £6,000 guaranteed minimum earnings 2nd six, plus all travel paid for. Pupillage to begin October 2007 1 x 12 Months Guaranteed, Guaranteed Earnings (£12,000), £6,000 grant 1st six, £6,000 guaranteed minimum earnings 2nd six, plus all travel paid for. Pupillage to begin October 2008.	1 June 2007 1 Sep 2007	No info.	Autumn 2007 Autumn 2008
Birmingham	2 x 12 Months Guaranteed, Grant & Guaranteed Earnings (£40,000), £20,000 award and £20,000 guaranteed earnings	15 May 2007	No info.	Autumn 2008
London	4 x 12 Months Guaranteed, Grant	30 April 2007	No info.	Autumn 2008

	& Guaranteed Earnings (£35,000)			
London	2 x 12 Months Guaranteed, Grant & Guaranteed Earnings (£20,000)	1 May 2007	No info.	October 2008
London	3 x 12 Months Guaranteed, Grant & Guaranteed Earnings (£30000), £8,000 BVC; £10,000 1st 6; £12,000 guaranteed earnings	30 April 2007	No info.	October 2008
London	1 x 12 Months Guaranteed, Grant & Guaranteed Earnings (£35,000), The package of first six award plus guaranteed second six earnings can, for the right applicant, be structured to be the equivalent to a pre-tax salary of around £35,000.	5 May 2007	<p>- First round interviews will probably take place between 11-24 June 2007.</p> <p>- Second round interviews will probably take place over the weekend of 14th/15th July 2007</p> <p>-Offers in line with the Summer OLPAS season: from 4pm on 31st July 2007.</p>	No information
London	3 x 12 Months Guaranteed, Grant (£40000)	12 February 2007	No info.	October 2008
Liverpool	1 x 12 Months Guaranteed, Grant & Guaranteed Earnings (£10,000), (deferred entry)	31 January 2008	No info.	Autumn 2008

ANNEX 5

OLPAS Rules Working Party Members:

Robert Francis QC (Chairman)

Peter Hughes QC

Mark Engelman

Christopher Moore

Philip Moser

Nadia Motraghi

Diana Newcombe

Matthew Nicklin

Robert Onslow

Inns of Court Scholarships

Middle Temple - 2007

Awards	Conversion Year	BVC Year	Pupillage Year	Other	<i>Total</i>
Entrance Exhibitions	6 awards of £165 to cover admissions & call fees	Up to 48 awards of £165			Up to £8,910
Other Entrance Exhibitions		£250 or £500 each			Up to £1,250
Major Scholarships	Appx. 20 scholarships of up to £10,000	Appx. 150 scholarships of up to £18,000, plus subsidised accommodation (24 places)			£900,000 (not including subsidies for accommodation)
Pupillage Hardship Fund			Individual applications		Up to £50,000
Harold G Fox Scholarships			2 placements in a Toronto law firm		£13,000
Anglo-American Exchange			1 placement with law firm in Des Moines, Iowa		£3,000
Lady Templeman Indo-British Goodwill Award			3 weeks in New Delhi and Rajasthan		£750
The Hon Sir Peter Bristow Scholarship			1 5-month-placement at the Commission of the EU and the European Court of Justice		£9,000
Other prizes			Various named awards of £100 each for performance in BVC		Up to £5,000
Essay prizes			1 x £1,000 1 x £500		£1,500
TOTAL					Up to £992,410 (Plus subsidies for accommodation)

Lincoln's Inn - 2008/9

Awards	Conversion Year	BVC Year	Pupillage Year	Other	Total
Hardwicke Entrance Award	100 awards to cover admission and call fees and dining charges				£30,000
CPE Scholarships	Up to 32 scholarships of up to £7,000				£150,000
Major awards for BVC year		Up to 70 scholarships of between £6,000 and £15,000 each (some for Inn accommodation) and up to 40 bursaries of £3,000 each			£879,000
Tancred Studentships		2 awards - £10,000 each, for communicant members of the Church of England			£10,000
Inns of Court School of Law Lincoln's Inn Scholarship		1 Scholarship of £6000 to pay half the cost of dees for the BVC at the Inns of Court School of Law			£6000
Pupillage Year Awards		Up to 50 scholarships of up to £500			£25,000
JP Warner Award				£3,000 to spend 3 months at the European Court of Justice	£3,000
International Criminal Court, the Hague Award				£3,000 to spend 3 months	£3,000

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				at the International Criminal Court	
Peter Duffy Human Rights Award				£3,000 to spend 3 months at the European Court of Human Rights	£3,000
Continuing education fund				£10,000 bursary fund for overseas placements	£10,000
Sundry prizes for exam papers and debating competitions (BVC)					£2000
TOTAL					£1,105,000

Gray's Inn – 2008/9

Conversion Year	BVC Year	Pupillage Year	Other		
£130,000	£697,250	£20,000	£12,750	TOTAL	£860,000

Inner Temple - 2008/9

Awards	Conversion year	BVC year	Pupillage year	Other	Total
Duke of Edinburgh entrance awards		50 awards of £160 to cover the Inn's fees for admissions and call			£8,000
Peter Taylor Scholarship		£20,000			£20,000
Chapman Scholarship		£17,500			£17,500
Princess Royal Scholarship	One award of £10,000, four of £7,500	One award of £15,000 four of £12,500			£105,000

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Other major scholarships and exhibitions	A number of awards totalling up to £125,000	A number of awards totalling up to £712,500			£837,500
Sir Joseph Priestly & Internship Awards				Sir Joseph Priestly Awards totalling £10,000 Internship funding totalling £14,000	£24,000
Benefactors' Scholarships and Prizes					£13,000
Disability grants				Up to £15,000	£15,000
TOTAL					£1,040,000

STUDENT FUNDING MEASURES: DETAILS OF GOVERNMENT SCHEMES

FUNDING FOR STUDENTS STARTING FROM AUTUMN 2008

(extract from www.direct.gov.uk)

There's more financial help for students going into higher education from September 2008 - including Educational Maintenance Allowance recipients

What are the changes?

One in three new full-time students could qualify for a full grant: worth up to around £2,835

More students will qualify for a Maintenance Grant

From September 2008, around one third of eligible students are expected to be entitled to a full Maintenance Grant of up to around £2,835. Around a further third are expected to qualify for part of the Maintenance Grant.

The amount you receive is based on your household income - and the good news is that you won't have to pay a penny of this back.

Student Loan repayment holidays

If you are due to start repaying your Student Loans after 1 April 2012, you will be offered the choice of putting your repayments on hold for up to a total of five years.

This could help you put your money where it's most needed at important times in your life - for example, buying a home or starting a family.

Get EMA? Get money for higher education!

If you currently get Education Maintenance Allowance (EMA), you're also likely to qualify for a grant to help with your costs if you go into higher education. This grant will not need to be repaid.

If you are a 16-year-old receiving an EMA in academic year 2008/2009, you will be given a firm guarantee of the minimum financial support you can expect to receive if you decide to continue into higher education.

Who will these arrangements apply to?

You don't need to repay student grants and bursaries!

These improvements will apply to you if you are a student living in England (or an eligible EU student) starting a new full-time higher education course anywhere in the UK from September 2008.

If you are already in higher education, or are due to start in September 2007, you'll continue to benefit from the existing package of financial support.

What is the current student finance package?

The student finance package consists of Student Loans for Tuition Fees and Student Loans for living costs, and non-repayable support in the form of a Maintenance Grant, and university and college Bursaries.

If you have a disability, mental health condition or specific learning difficulty, or if you are a student who has children or adult dependants, you could also be eligible for additional help that doesn't have to be repaid.

STUDENT LOANS FROM THE GOVERNMENT

Student Loans are there to help with the costs of higher education. They're issued by Student Finance Direct, a service managed by the Student Loans Company in partnership with local authorities and the government.

The interest on Student Loans is linked to the rate of inflation, so in real terms what you repay will be broadly the same as what you borrowed.

There are two types of loan available - you can take out either or both:

- a Student Loan to cover your tuition fees - called the 'Student Loan for Tuition Fees'
- a Student Loan to help with your accommodation and other living costs - called the 'Student Loan for Maintenance'

Student Loan for Tuition Fees

All eligible full-time higher education students entering higher education in or after September 2006 can get a Student Loan for Tuition Fees.

The loan will cover any amount up to the full amount you're charged for tuition fees. For new students - and most who started in 2006/2007 - this means:

- up to £3,145 in 2008/2009
- up to £3,070 in 2007/2008

The Student Loan for Tuition Fees is paid directly to your university or college by Student Finance Direct.

Student Loan for Maintenance

The Student Loan for Maintenance is there to help towards your accommodation and other living costs while you're studying. You could get up to £6,315 for 2007/2008.

Student Finance Direct will usually pay the money into your bank account in three instalments - one at the start of each term.

How the Student Loan for Maintenance works

All eligible full-time students can get a Student Loan for Maintenance, but the exact amount you can borrow will depend on several factors - including your household income and where you live while you are studying.

It's also affected by any help you get through the Maintenance Grant (though not the Special Support Grant).

Working out whether you can get the maximum loan

You can take out around 75 per cent of the maximum Student Loan for Maintenance regardless of your household income - this is called the 'non income assessed' part of the loan.

Whether you get the remaining 25 per cent - the 'income assessed' part of the loan - depends on your household income.

How much you can get

Student Loan for Tuition Fees: rate for 2008/2009

The maximum rate for 2008/2009 is up to £3,145.

New students and students who started in 2006/2007

For new students - and most students who started in 2006/2007 - the loan will cover the full amount charged for tuition fees. This means up to £3,070 for 2007/2008

Student Loan for Maintenance: maximum rates for 2007/2008

The amount of help you can get through the Student Loan for Maintenance is partly linked to your household income – but you'll be able to get 75 per cent of the maximum amount whatever your household income.

Maximum rates if 2007/2008 isn't your final year

	Living at home	Living away from home outside London	Living away from home in London
Maximum Student Loan for Maintenance	£3,495	£4,510	£6,315
75% not income assessed	£2,620	£3,385	£4,735
25% income assessed	£875	£1,125	£1,580

Maximum rates if you're a final year student in 2007/2008

	Living at home	Living away from home outside London	Living away from home in London
Maximum Student Loan for Maintenance	£3,155	£4,175	£5,750
75% not income assessed	£2,365	£3,130	£4,315
25% income assessed	£790	£1,045	£1,435

Maintenance Grant and Special Support Grant: rates for 2007/2008

How much you can get for 2007/2008

Up to £2,765 is available through the Maintenance Grant or Special Support Grant. Exactly how much you can get depends on your household income - the table below shows some examples.

Household income	Amount of grant
Up to £17,910	£2,765
£20,000	£2,417
£25,000	£1,584
£27,120	£1,230
£30,000	£927
£35,000	£401
£38,330	£50
£38,331 or more	No grant

Maintenance Grant: effect on other financial help

If you get the Maintenance Grant, some of it is paid instead of the Student Loan for Maintenance. For every £1 of Maintenance Grant you get up to £1,230, the amount you can borrow through your loan falls by £1.

So, if you're a student from a lower income household, you will have a smaller loan to repay when you finish studying and start work.

The table below has some example figures to give you an idea of how much help you could get towards accommodation and other living costs through the Maintenance Grant and Student Loan for Maintenance.

The figures are based on a student who is living away from home and studying outside London in 2007/2008.

Your household income	£17,910	£27,120	£35,000	£40,000
Maintenance Grant	£2,765	£1,230	£401	No grant
Student Loan for Maintenance (living away from home outside London)	£3,280	£3,280	£4,109	£4,385
Total for 2007/2008	£6,045	£4,510	£4,510	£4,385

For students with a household income over £38,805, the maximum Student Loan for Maintenance available will be reduced by up to 25 per cent. Exactly how much is available depends on an 'income assessment'.

HIGHER EDUCATION GRANT AND TUITION FEE GRANT

Higher Education Grant

The Higher Education Grant is there to help with with accommodation and other living costs. It's available to full-time higher education students from lower income households.

Tuition fee grant

The tuition fee grant is money paid by the government to your university or college to help cover your tuition fees. It may cover all or part of your tuition fee contribution, depending on your income and the income of your household.

Higher Education Grant: how much can you get?

The amount you can get will depend on your household income. For 2007/2008, the maximum Higher Education Grant is £1,000 a year.

Higher Education Grant in 2007/2008

Your household income	How much Higher Education Grant you get
£16,340 or less	Full grant (£1,000)
£16,340-£22,325	Partial grant (at least £50)
£22,326 or more	No grant

Tuition fee grant: how much can you get?

Depending on your income, the tuition fee grant may cover some or all of your tuition fee contribution. The maximum amounts are:

- 2008/2009: £1,255 a year
- 2007/2008: £1,225 a year

If you get the maximum tuition fee grant, you will have no tuition fees to pay. If you don't get the maximum grant, you can take out a Student Loan for Fees to cover the shortfall.

For 2007/2008, single, independent students will get the full tuition fee grant if they have an income of less than £10,750.

The maximum you'll have to contribute towards your tuition fees - £1,225 in 2007/2008 - represents around a quarter of the actual cost of the average higher education course. The rest of the cost is automatically covered by the government.

BACKGROUND TO EQUALITY DUTIES

As the statutory Code of Practice observes:

“The concept of discrimination in the Act¹¹⁰ reflects an understanding that functional limitations arising from disabled people’s impairments do not inevitably restrict their ability to participate fully in society. Rather than the limitations of an impairment, it is often environmental factors (such as the structure of a building, or an organisation’s practices) which unnecessarily lead to these social restrictions. This principle underpins the duty to make reasonable adjustments... It is as important to consider which aspects of an organisation or body’s activities create difficulties for a disabled person as it is to understand the particular nature of an individual’s disability.”¹¹¹

The Sex Discrimination Act 1975, the Race Relations Act 1976 and the Disability Discrimination Act 1995 also require the Bar Council, in exercising their public functions, to have due regard to the need to achieve certain equality outcomes, namely the *elimination of discrimination* and the *promotion of equality of opportunity* and, in the case of disabled people, the need to take steps to take account of disabled persons disabilities, even where that involves treating disabled persons more favourably than other persons. The Disability Discrimination Act 1995 also imposes a duty on the Bar Council in the exercising of its public functions to have due regard to the need “*to promote positive attitudes towards disabled persons and the need to encourage participation by disabled persons in public life*”.¹¹² The Bar Council is under a duty to assess the impact of its policies and practices, or the likely impact of its proposed policies and practices, on equality between women and men and on the promotion of race and disability equality.¹¹³ In broad terms it is our hope and expectation that the recommendations we have made in this report will promote, and in some cases further promote, equality for women, Black and ethnic minority and disabled people aspiring to enter the Bar or practising at the Bar.¹¹⁴ We have taken close account of the need to give weight to the equality objectives identified in the legislation but we recognise that before certain of our recommendations can be adopted, full impact assessments will have to be conducted by the Bar Council to ensure that their likely effect (including their positive effect) is properly measured and taken into account.

¹¹⁰ The Disability Discrimination Act 1995.

¹¹¹ Para 2.2, “Code of Practice: Trade Organisations and Qualifications Bodies” (2004) DRC.

¹¹² Section 49A.

¹¹³ Race Relations Act 1976 (Statutory Duties) Order 2001, Article 3; Sex Discrimination Act 1975 (Public Authorities) (Statutory Duties) Order 2006, Article 2 and Disability Discrimination (Public Authorities) (Statutory Duties) Regulations 2005, Regulation 2 (“*That authority’s methods for assessing the impact of its policies and practices or the likely impact on equality for disabled persons*”). See too, Section 76A Sex Discrimination Act 1975; Section 71 Race Relations Act 1976 and Section 49A Disability Discrimination Act 1995.

¹¹⁴ Specific reference was made to these duties in certain of the responses to the Interimthe Interim Report. See, e.g., the response from the Lawyers for Disabled Equality (May 2007).

Whilst barristers are self employed professionals, there is a public interest in securing a diverse bar. Such is likely to promote confidence in the Bar and ensure that all communities are properly served. If the Bar is seen as a profession comprised of practitioners from one community only it is unlikely to be regarded as legitimate and this may undermine its role in the justice process. The Bar is in any event under a legal duty, as we have said, to have due regard to the need to eliminate discrimination and promote equality of opportunity for certain groups¹¹⁵ and not to discriminate. Whilst there are many barriers to equality for women, disabled and minority barristers that are outside the control of the Bar Council, for example, inaccessible court buildings or listing arrangements which disadvantage those with caring responsibilities, the Bar Council can do much to promote good practice in the Bar itself and to lobby for good practice in the wider community where that will assist in promoting equality for barristers. The statutory equality duties require the Bar so to do. As the Code of Practice advises:¹¹⁶

*"The general duty requires public authorities to adopt a pro-active approach, mainstreaming disability equality into all decisions and activities... Public authorities are expected to have 'due regard' to the ... parts of the general duty. 'Due regard' comprises two linked elements: proportionality and relevance. In all their decisions and functions authorities should give due weight to the need to promote disability equality in proportion to its relevance. This requires more than simply giving consideration to disability equality."*¹¹⁷

As to the impact assessment process:

"The purpose of impact assessment is both to ensure that an authority's decisions and activities do not disadvantage disabled people, and also to identify whether they might better promote equality of opportunity, including consideration of where the different parts of the disability equality duty (such as promoting positive attitudes) might be built into those policies and practices. Where a negative impact, or missed opportunity to achieve a more positive impact, is identified, this indicates to the authority that it should have due regard to the need to modify the policy or practice".¹¹⁸

This means that in all of the work of the Bar Council, including in its relationships with other bodies, including the Ministry of Justice, the Judicial Appointments Commission, the Crown Prosecution Service, amongst others, it must have "due regard" to the equality objectives and in formulating its policies it must ensure that they are properly impact assessed and "equality proofed".

¹¹⁵ See Chapter: Introduction.

¹¹⁶ The Duty to Promote Disability Equality: Statutory Code of Practice, England and Wales (2005) DRC.

¹¹⁷ Paras 2.33 – 2.34.

¹¹⁸ Paras 3.30 – 3.31.

**EXTRACTS FROM COMMENTS ON RETENTION ISSUES
RECEIVED IN THE BAR'S EXIT SURVEY AND RESPONSES TO
THE INTERIM REPORT**

1. We have included a selection of comments from the last exit survey and from the responses to the Interim Report.
2. Comments from respondents included in the last exit survey include the following:
 - (1) *“It is almost impossible to arrange childcare whilst working at the Bar. I worked part-time at Lovells once I had my first child and stopped working when my second child was born. I intend to return to work but I am concerned that the hours are so unpredictable at the Bar it makes the cost of childcare very difficult to meet. I’m not sure I can afford to return to the Bar”.*
 - (2) *“I have found the Bar to be a predominantly racist institution peopled by ‘old boys’ network corruptible judges who have failed to act on godly principles which the common law was founded upon (Ecclesiasts, Deuteronomy) and given over to filthy work. There is no level playing field and until the Bar is purged of corruption it is not a place for the minorities”.*
 - (3) *“I ceased practice solely because of medical disability (assessed 100% disabled from working)”.*
 - (4) *“I wasn’t offered a tenancy so I left to work for a law firm. The lack of training, support, advice, mentoring at the Bar is quite striking on reflection. There is an absence of cohesive, collective, responsible approach to all H. R. issues. In 21st century, it borders on being exploitative”.*
 - (5) *“I was never in practice as a barrister. Following 18 months of pupillage my then set of Chambers decided to recruit – but recruited my co-pupil, the son of the head of Chambers. I left the Bar at that stage and have not returned”.*
 - (6) *“The Bar remains an elitist profession concentrated from public schools – sadly other individuals change accents and try to assimilate such traits to survive”.*
3. Responses to the Interim Report included the following observations:
 - (1) *“Whilst we have no doubt that the profession as a whole subscribes to the aim of open access and has taken huge strides to ensure that this aim becomes a reality, the reality is that some Chambers are better than others in this regard” (Response of Gray’s Inn).*

- (2) *“I would consider my Chambers more enlightened than many, but my busy junior practice almost disappeared altogether when I took a 3 month maternity period for my first child”* (Joanne Wicks).
- (3) *“All practitioners should have a professional responsibility to ensure that there are equal opportunities for all regardless of background, race, gender etc. The Bar and the Inns could do more to promote this. A couple of small examples: the need for prospective pupil supervisors to travel to London to undertake training and most Inns and Bar Council events being held in London and in the evening requiring long journeys or even overnight stays for some will deter/prevent some practitioners from taking part.”* (Response of the CPS).
- (4) “It seems ... that disability discrimination is still prevalent across the Bar. Having spoken to disabled barristers about being given less work than their non-disabled counterparts and instructing solicitors being given discretion to choose another barrister if they don’t want a disabled person acting for them” (Heather-Anne Smith).

