



LORD CHIEF JUSTICE  
OF ENGLAND AND WALES

THE RIGHT HONOURABLE THE LORD JUDGE

**Preface to the Bar Standard Board's  
new Handbook on Pupillage**

Pupillage – a period of twelve months' practical work and experience under the supervision and guidance of an established practitioner – is an indispensable qualification for practice at the Bar of England and Wales.

I hugely enjoyed my own pupillage, which brought home to me not only the importance of the ethics of practice as an advocate, but also how a highly competitive profession was characterised by kindness and friendship and willingness to help, as well as straight dealing.

The Bar Standards Board, as regulator of the profession, is obviously concerned that from the very start of their careers, barristers should be capable of conducting themselves within the long established standards of the profession. Whether barristers practise at the self-employed or the employed Bar, both in and out of court, it is clearly in the public interest that they should, at all times, maintain the highest standards of the profession.

This Handbook brings together in one place the professional rules and regulations which govern the system of pupillage, and it contains a wealth of advice and guidance on good practice for those responsible for the training and supervision of pupils, and the pupils themselves. It also recognises the contributions which are made by the Inns, the Circuits and the Specialist Bar Associations. It demonstrates that pupillage is a collaborative exercise in which all those with an interest in the profession and those who are to practise in it are engaged. It is in the overall public interest that the high standards emphasised in this Handbook should be maintained.

The Handbook will be developed and adapted as and when necessary, and it will, I am confident, continue to provide immensely valuable assistance to those embarking on what I hope will prove to be a most interesting time of pupillage.

Lord Chief Justice of England and Wales

**Royal Courts of Justice**  
Strand  
London WC2A 2LL



## Introduction

This Handbook has been produced by the Bar Standards Board (BSB) as the independent regulatory arm of the Bar Council since January 2006. The Bar Council is recognised by the Legal Services Board (LSB) as the official Approved Regulator for education and training for the Bar. The purpose of this Handbook is to ensure adherence to the rules and procedures pertaining to pupillage, and also to promote good practice and to achieve greater consistency between pupillages, through the provision of information and advice. It was drawn up following the major Review of Pupillage (conducted October 2008 – April 2010) under the Chairmanship of Derek Wood CBE QC, and brings together previously existing material, regulations and guidance (revised in accordance with the recommendations of the Wood Working Group) into one handbook. It is designed to be of use to pupils, supervisors, Approved Training Organisations (ATOs) and all those involved in the monitoring and quality assurance of pupillage training.

Key sections of the Bar Training Regulations (BTRs) are reproduced in the appendices and cited, *passim*, as appropriate. Guidance is provided on the process whereby chambers and employers' organisations can be authorised to train pupils. The material included here defines the standards to be met by chambers and other ATOs, standards for supervisors, and standards to be attained by pupils (in terms of knowledge, skills and competencies for core and specialist areas). The roles and responsibilities of pupils and supervisors are outlined, as well as the nature of the compulsory and specialist areas of practice to be undertaken by pupils. Practical information on administrative and quality assurance procedures to be followed as required by the BSB and LSB is also included.

This Handbook is the official reference document for Pupillage Training and must be adhered to as appropriate from 1 September 2010. ATOs will be particularly interested in sections 3, 5 and 6; supervisors in sections 4 and pupils in sections 9, 10, 11, 13 and 14. However, all sections will be relevant (to a greater or lesser extent) as reference material to all those involved in pupillage. They are arranged so as to be in line with the Report of the Wood Review of Pupillage.

Full details of the consultation process and methodology leading to the development of this document are provided in the Report of the Wood Working Group on Pupillage, presented to the BSB May 2010, which is available separately. Members of the Working Group are listed in the Report.

The Education and Training Department of the BSB will revise and update this Handbook periodically in order to ensure currency, and to provide additional guidance and clarification as necessary. Updated information will also be maintained on the website of the Bar Standards Board. This is the first edition of this new Handbook and comments should be made by 31 March 2011 for consideration for the second edition.

Comments and queries should be directed to:

Dr V Shrimplin  
Education Standards Department  
Bar Standards Board  
289-293 High Holborn  
London WC1V 7HZ  
Tel: 0207 611 1444



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# 1 The Regulatory Framework for Pupillage

## 1.1 The aims and objectives of Pupillage

Pupillage is the final stage on the route to qualification as a practising barrister, in which practical training is undertaken supervised by an experienced member of the Bar. Those who successfully complete pupillage according to the specified standards, together with the compulsory continuing education courses, will be granted a full qualification certificate.

The BSB is committed to ensuring that pupillages are of the highest quality, in terms of both the individual learning experience and the overall training environment. Therefore, in order to ensure that standards for the provision of training are met, all chambers and other Approved Training Organisations (ATOs) that take pupils must be approved by the BSB before they may take pupils. In addition, chambers and other ATOs are also monitored by the BSB in a number of ways. In particular, pupils have the opportunity to provide feedback about the quality of their pupillage learning experience.

In line with the principles expressed in the Bar Training Regulations (BTRs), the aims of the Pupillage stage of training are:

- to prepare pupils (who have been Called to the Bar) for practice at the Bar of England and Wales
- to develop further the knowledge, skills and competencies gained at the Vocational stage of training so that pupils can be assessed as competent in the practice of law
- to provide further development of excellence in advocacy
- to further develop a high level professional and ethical approach to practice as a barrister, in accordance with the Code of Conduct
- to establish the skills and competencies necessary for practice, whether in chambers or as an employed barrister
- to equip pupils to perform competently in matters in which they are likely to be briefed during the early years of practice, and to provide skills and experience to enable them to deal with more complex matters as they develop
- to ensure that pupils are able to take responsibility for their own professional development
- to prepare pupils for practice in a culturally diverse society
- to enable members of the Bar from overseas jurisdictions to acquire the skills required for practice at the Bar of England and Wales, thereby assisting them to undertake further training or practice in their home jurisdiction.

## 1.2 Principles of Regulation of Pupillage by the BSB

The mission of the BSB, declared in its Strategic Plan 2007, is 'to be recognised as promoting and safeguarding the highest standards of legal education and practice in the interests of clients, the public and the profession.' The BSB regulates training independently in the public interest in a way which balances the interests of the users and the providers of services. This extends to the regulation of the Pupillage Stage of Training.

Pupillage is the final stage of training for practice at the Bar and, following satisfactory completion, a barrister is entitled to provide legal services and exercise a right of audience in all courts. Recruitment to pupillage is therefore an activity which is of vital importance both to applicants and for the long term health and vitality of the Bar.

### 1.3 The Bar Training Regulations

The Legal Services Act 2007 provides an overall framework for the regulation of the legal profession. The BSB derives its authority from the Inns of Court. Previously, the 'Consolidated Regulations of the Inns of Court' were published jointly by all four Inns, in order (among other things) to specify the training which a student had to complete in order to become a barrister. More recently, the Inns agreed that the Bar Council would be wholly responsible for making rules of conduct which apply to barristers and will have primary responsibility for areas of education and training (including pupillage). From 2006, all the regulatory powers of the Bar Council including this one were delegated to the BSB.

The BTRs, drawn up by the BSB and approved by the Secretary of State, replaced the Consolidated Regulations of the Inns of Court from 1 September 2009. They set out the training which a person must complete, and other requirements which a person must satisfy, in order to be called to the Bar by an Inn and be qualified to practise as a barrister. They are available on the BSB website at: <http://www.barstandardsboard.org.uk/assets/documents/BTR%2009.pdf>. Key sections are included in Appendices of this Handbook, namely Appendix A: Part V 'The Professional Stage' and Appendix B: Schedule C 'Pupil Supervisors'.

### 1.4 The Code of Conduct

The BTRs should be read and interpreted in conjunction with the Code of Conduct of the Bar of England and Wales. This publication is available online at: <http://www.barstandardsboard.org.uk/standardsandguidance/codeofconduct/>. A hard copy may be obtained on request (email: [printroom@barcouncil.org.uk](mailto:printroom@barcouncil.org.uk)).

The 8th Edition of the Code of Conduct of the Bar of England & Wales came into effect on 31st October 2004. It is currently under review with a revised code anticipated in mid 2011. Relevant Sections of the current Code are set out in Appendix C (Part VIII, 801 -805) and Appendix D (Advertising and Funding Requirements).

### 1.5 The Equality and Diversity Code

The current Equality and Diversity Code for the Bar was approved by the Bar Council in 2004. Key parts of it are incorporated into the Code of Practice. All those involved in pupillage should make themselves familiar with the Equality and Diversity Code, available at: <http://www.barstandardsboard.rroom.net/standardsandguidance/eanddcode/>

The sections that are currently the most pertinent to pupillage are as follows:

- Section A1 – Recruitment: Pupils and tenants, pp.13 – 18.
- Annex B – Essential Techniques in Selection, pp. 62 – 94.
- Annex C - Age Discrimination in Pupillage [and Tenancy], pp. 95 – 97.
- Annex D – Reasonable adjustments in Pupillage [and Tenancy] pp. 98 – 99.

Some particularly relevant sections are reproduced in Appendix E but all those involved in the pupillage should familiarise themselves with the Equality and Diversity Code as a whole. It should be noted that the Equality & Diversity Code is currently being revised and is due to be reissued in mid 2011. A toolkit for use in recruitment is also being developed.

### 1.6 Status of additional BSB regulations/requirements

The BTRs represent a new settlement with the Inns in relation to matters of education and training. By agreeing to the BTRs, the Inns have agreed that the BSB may exercise the powers which the BTRs contain. These include wide power to amend the BTRs themselves. In the chapters that follow, mandatory requirements are indicated by the inclusion of the relevant training regulation, highlighted in a text box. The remaining instructions while not specified in the BTRs have been laid down by the BSB and are made in accordance with BTR3 and BTR33 as explained in the next chapter. Good practice is also indicated.

## 2 Overview

### 2.1 The Professional Stage of Training

**BTR3** To become qualified to practise as a barrister a person must:(a) be called to the bar by an Inn (b) complete or be exempted from the Professional stage of training and (c) satisfy such further requirements as are set out in the Code of Conduct

There is an important distinction between being a barrister and practising as a barrister. A person may become, and remain, a barrister without undertaking pupillage as the BTRs allow a student to be called to the Bar after completing the Vocational Stage and without having commenced pupillage. However, in order to become qualified to practise as a barrister, a person must complete (or be exempted from) the Professional Stage of training (into which pupillage has been subsumed) and satisfy such further requirements as are set out in the Code of Conduct (the Code). A person practises as a barrister if either he/she holds him/herself out as a barrister or exercises a right that he/she has by reason of being a barrister, in connection with the supply of legal services.

The Code (para 202) permits a person to practise as a barrister only on certain conditions, one of which is compliance with the BTRs. By way of exception from the general rule, paragraph 802 of the Code allows a barrister who is a pupil and who has completed or been exempted from the first six months of pupillage to practise. Any barrister who practises (i.e. either holds him/herself out as a barrister or exercises a right that he/she has by reason of being a barrister, in connection with the supply of legal services) without having complied with applicable training requirements set out in the BTRs, would be acting in breach of the Code. In accordance with the Disciplinary Tribunals Regulations he/she would be liable to be disbarred and expelled from his/her Inn.

In addition, under the Legal Services Act 2007, the Bar Council (as the Approved Regulator) can authorise persons to carry on 'reserved legal activities', which include exercising rights of audience subject to the provisions of the Act. As the Bar Council has delegated its regulatory functions to the BSB, the BSB can therefore specify requirements (including training requirements) which a person must satisfy in order to be entitled to exercise a right of audience, although amendments to any of an Approved Regulator's 'regulatory arrangements' require the approval of the LSB.

BTR 3C empowers the BSB to specify the level of competence expected of a barrister.

**BTR3C** The Board shall publish from time to time a general statement of the minimum level of competence reasonably to be expected of a barrister when first qualified to practise

The BSB is therefore authorised to make any changes that it thinks fit to any of the requirements and regulations relating to the pupillage stage of training, subject to the need to obtain the approval of the LSB where necessary.

This is also made explicit in BTR33.

**BTR 33** Any period of pupillage must provide training which is adequate and which complies with such criteria as may be published by the Board

The BSB is authorised to set additional regulations, or provide additional detail, relating to the Pupillage Stage of Training, the approval of ATOs and the approval of supervisors. The following sections therefore deal in particular with the requirements for the approval of chambers and other ATOs in providing pupillage placements; the training and accreditation

process required of pupil supervisors; the overall framework and content of training at the pupillage stage; and the standards and competencies to be demonstrably attained by pupils.

## 2.2 Overall structure and duration of pupillage

**BTR 30** Pupillage is divided into two parts: a non-practising period of six months; and (b) a practising period of six months

The BTRs require that a person who intends to practise as a barrister must complete at least 12 months pupillage. Pupillage should thus be divided into the first non-practising six months and the second practising six months.

**Non-Practising six.** The non-practising six must be undertaken in England or Wales in a set of chambers or other ATO.<sup>1</sup> The non-practising six must be undertaken in a continuous period of six months (unless undertaken part time). Pupils do not have to have been called to commence the non-practising six months, provided that they have successfully passed the Bar Vocational Course (from Academic Year 2010-11, the Bar Professional Training Course or 'BPTC').

**Practising six.** The practising period of pupillage must commence no later than twelve months after the non-practising period of pupillage has been completed. It must be undertaken in a continuous period of six months or with only such intervals (each not exceeding one month) as to ensure that the practising six months is completed within an overall period of nine months.

Pupillage should normally be organised on a twelve months' basis. Although a twelve months' pupillage is arranged as 'first six' and 'second six', subdivisions of time may occur, for example in Chambers where it has become normal practice to 'rotate' pupils through two or more placements. This practice exposes pupils to a wider range of experience and leads to a more rounded assessment of their performance (see also 14.9 for duration of pupillage and part time pupillages).

For details of the content and structure of training (i.e. curriculum and competencies and how these are to be taught/supervised, learned and assessed); see Chapters 8 - 11 of this Handbook.

## 2.3 Bar Training Regulations governing pupillage

**BTR 34** Except as provided in Regulation 42, any period of pupillage must be undertaken: (a) in an Approved Training Organisation; and (b) with a barrister who is a registered pupil supervisor

Pupillage must be undertaken both with a registered pupil supervisor and in an ATO. Applications for accreditation as a pupil supervisor are made to a barrister's own Inn of Court, under the procedures set out in BTR Schedule C. Approved pupil supervisors are registered with the BSB on the recommendation of the relevant Inn. For details of requirements for approval as a supervisor, see Chapter 4. Applications for authorisation as an ATO are made to the Qualifications Committee of the BSB. For details of requirements for approval as an ATO, see Chapter 3 below.

<sup>1</sup> '...or with a barrister practising in one of the member states of the European Union' (recommendation accepted in principle by the BSB).

## 2.4 Duties of Institutions involved with Pupillage

### 1 The Bar Standards Board

The BSB is authorised by the Bar Council, in compliance with the Legal Services Act 2007, to determine all matters of policy affecting the education, training and discipline of barristers, and to perform various administrative and regulatory functions relating to pupillage. These include:

- maintaining registers of pupils and their supervisors
- issuing provisional and full qualification certificates to pupils<sup>2</sup>
- overseeing the training offered to pupils and laying down standards of performance
- monitoring of pupillage offered by pupillage providers
- advising pupils on regulatory matters
- maintaining a register of satisfactory completion of compulsory continuing education courses
- regulating the conduct of members of the profession and taking appropriate action in respect of pupil supervisors and pupils who are in breach of their obligations under the BTRs or the Code.

### 2 The Inns of Court

All pupils must be a member of one of the four Inns of Court before commencing pupillage, although they may commence the non-practising six before they have been Called to the Bar. The Inns have a number of functions relating to pupillage. They deliver the compulsory courses (Pupillage Advocacy Training and the Practice Management Course) for pupils in London, provide various library facilities and administrative services, and are a focus for activities such as moots, lectures and social events. Each Inn's Education Officer can provide pupils with advice and assistance regarding all aspects of pupillage, and who will support pupils in the pursuit of a complaint or grievance. The Inns assess pupils on the compulsory courses and are also involved in monitoring the overall standard of pupilages. Failure to pass the assessment means that the pupil cannot proceed to a second six.

### 3 The Circuits

Many practising barristers work from chambers and organisations that are closely linked with one of the six Circuits (Northern, North Eastern, Wales and Chester, Midland, South Eastern, Western) into which the administration and organisation of the court system of England and Wales is divided. A significant number of these locations offer pupilages, and for pupils in these chambers and organisations, the Circuits will share or replace some of the duties of the Inns in relation to pupillage. Each Circuit organises a compulsory continuing education programme for pupils, comprising Advocacy Training and the Practice Management Course. They also offer a range of educational and social opportunities for pupils and barristers and may, depending on the Circuit, offer some administrative or other facilities to members. Circuits also carry out some monitoring of pupillage (in conjunction with the Inns and the BSB).

### 4 Chambers and other ATOs

Organisations, including sets of chambers, may be authorised by the BSB to offer first and/or second six pupilages, provided that there are one or more registered pupil supervisors who are eligible to take pupils and the organisation can meet the other requirements laid down by the BSB.

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<sup>2</sup> The Bar Council is responsible for issuing practising certificates to those who are entitled to practise as barristers. From 1 January 2010 it has been a criminal offence to practise as a barrister without a practising certificate (in accordance with the Legal Services Act 2007). Therefore practising pupils are now issued with practising certificates.

The Head of Chambers is ultimately responsible for pupils in chambers, and is required by the Code of Conduct to take all reasonable steps to ensure that proper arrangements are made for dealing with pupils and pupillage and that matters are conducted in a manner which is fair and equitable for all barristers and pupils. A Director of Pupil Training, normally the Chair of the Pupillage Committee, should however be appointed to oversee pupillage arrangements in chambers on a day to day basis.

Other ATOs (in the Employed Sector) authorised by the BSB to take pupils must appoint a Director of Pupil Training (preferably a practising barrister) who will take overall responsibility for pupils and pupillage arrangements within the organisation. At the Employed Bar, the personnel or human resources department should also be able to provide any information that pupils need about the terms and conditions of their employment.

Heads of Chambers and Directors of Pupil Training are responsible initially for ensuring that appropriate pupillage documentation is prepared setting out the chambers' or ATOs' policy in relation to the BSB's requirements and recommendations.<sup>3</sup>

Even if a pupil aims to practise as an employed barrister on completion of pupillage, it is still important to understand how sets of chambers and clerking arrangements work. ATOs at the Employed Bar are therefore encouraged to arrange placements or exchange schemes with sets of chambers to give pupils the opportunity to experience self-employed practice.

## 5 Specialist Bar Associations

As the law has become more complex, barristers increasingly specialise in particular areas of work. A number of Specialist Bar Associations (SBAs) exist to provide support, training and representation for their members. Many SBAs provide guidance on the specialist training which pupils attached to their members ought to receive. Indicative content of specialist areas of training for the Bar are provided separately on the BSB website, in order to facilitate their individual updating by the relevant SBA (see also Chapter 10 below).

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<sup>3</sup> The role of Director of Pupil Training will be a BSB requirement from 1 September 2010, or as soon after as practicable for these arrangements to be made (subject to any necessary change in the BTRs or Code).

### 3 Accreditation as an Approved Training Organisation

**BTR37** The Board will designate an organisation as an Approved Training Organisation if it is satisfied: (a) that [there are] one or more registered pupil supervisors who are available to provide pupillage training practise in the organisation; and (b) that the organisation has made proper arrangements for dealing with pupils and pupillage in accordance with the Code of Conduct

#### 3.1 Accreditation as an Approved Training Organisation (ATO)

As specified in the BTRs (BTR37 cited above) chambers and other organisations must formally apply to the BSB to be accredited as an Approved Training Organisation. The system of formal accreditation applies equally to chambers and other organisations (for example, those which employ practising barristers) and has been in place since the inception of the BSB in 2006. However, all chambers having at least one pupil in place at 1 September 2006 were approved by virtue of this fact (in a 'grandparenting' process exempting those already involved in this activity from the new procedures). Such organisations were therefore deemed to have been authorised, without needing to make an application.

#### 3.2 Approval of supervisors within an ATO

Not only do chambers and other Approved Training Organisations need approval to take pupils, supervisors must also be approved as individuals to supervise and assess pupils. An ATO will not be approved if adequate supervision is not provided and accessible. For information relating to supervision, see Chapter 4 below.

#### 3.3 Application procedure

Formal applications for ATO status must be made to the BSB by chambers or other organisations who wish to offer pupillages. Regulatory requirements are specified in BTR 37 but applicants should also demonstrate that standards for ATOs have been met (as summarised in Appendix F). Applications must be made in writing on the appropriate and current application form, which is available from the BSB (online or hard copy) and must be accompanied by the appropriate application fee. Applications made other than in accordance with current procedures and using the current application form will not be considered. Detailed guidance of the procedures are available on the BSB website, but are summarised below. Applications are normally dealt with on paper only and it is the responsibility of the applicant to ensure that all supporting evidence is submitted.

#### 3.4 Information and documentation required

Sufficient information must be submitted in order to demonstrate that BTR 37(a) and BTR 37(b) are met. The BSB regards it as good practice to present information in the form of a Pupillage Policy Document which should demonstrate the following:

1. The requirements and standards normally required of an ATO are met (see Standards for ATOs, reproduced here as Appendix F)
2. Each proposed pupil will be supervised, on a regular basis, by a registered pupil supervisor (See BTRs Schedule C, reproduced here as Appendix B)
3. Each pupil will have regular contact with at least one other solicitor or barrister with at least three years' experience of practice
4. At least one of the lawyers mentioned above is entitled to exercise a right of audience before every Court in relation to all proceedings and has been so entitled for at least three years
5. A Director of Pupil Training is in place in the ATO with overall responsibility for pupillage. Provided that the director is aware of the responsibilities involved, and has undergone the same training as a supervisor, that person does not have to be an accredited pupil supervisor him/herself. The Director of Pupil

Training can be the Head of Chambers, another senior practitioner within the organisation, or a senior administrator

6. The proposed pupillage programme satisfactorily covers all of the outcomes and specified standards and competencies to be attained by pupils
7. The organisation undertakes to provide training in accordance with guidance issued from time to time by the Bar Standards Board

#### **3.5 The Pupillage Policy Document**

The Pupillage Policy Document should also include details of:

1. The number and type of pupillages on offer
2. Recruitment of pupils, and how this adheres to BSB requirements
3. The roles and duties of pupils, demonstrating adherence to BSB requirements
4. The roles and duties of pupil supervisors, demonstrating adherence to requirements
5. The general pattern of pupillage (e.g. whether served with more than one supervisor)
6. Funding/salary arrangements and the finance available to pupils (including details of any guaranteed earnings or loan schemes)
7. Payment for travelling expenses and compulsory courses
8. The programme/checklist(s) to be used during pupillage (see Appendix I). The ways in which mandatory competencies are to be attained by pupils must be demonstrated, as well as simply the completion of a list of tasks.
9. The method for fairly distributing work amongst working pupils
10. Procedures for providing pupils with an objective assessment of their progress at regular intervals during pupillage
11. Chambers/organisation's complaints and grievance procedures
12. Equality and Diversity and/or Equal opportunities policies
13. General policy as to recruitment of tenants/employed barristers and those not taken on as tenants/employed barristers
14. Details of registered pupil supervisors and other lawyers in the organisation

The BSB may request further information or documentation if considered necessary. Additional factors such as Investors in People status may be taken into account.

#### **3.6 Changes to approved placements**

Once approval has been granted, any material change (e.g. change in location, change in resources, departure of supervisor) must be notified to the BSB. This may result in the need for further details to be provided, or possibly a meeting or visit or discussion.

#### **3.7 Time limits and conditional approval**

Approval will normally be without time limit, but approval may be conditional upon certain additional requirements being met. These will be specified, together with a time limit for meeting conditions and addressing recommendations. The BSB reserves the right to carry out a visit to an ATO at the point of its seeking approval, where issues arise (or for random sampling purposes, either as part of general chambers monitoring, or for the purpose of monitoring and sampling pupillage arrangements).



### 3.8 Appeals against approval decisions

Where an application for authorisation as an ATO is refused by the BSB, an appeal may be made (see BTR39), provided that the request is made in writing to the Board within one month of the date when notice of the decision was given (BTR40). Appeals are dealt with on paper only. Further details are available from the BSB.

### 3.9 Infringement of conditions and 'triggered' visits

Where the BSB has cause for concern, a paper-based review and/or a 'triggered visit' to an ATO may take place. The need for a 'triggered visit' will normally happen when one or more requirements of the BTRs and/or the Code of Conduct have been infringed, such as:

- where there is evidence that a pupillage has not been properly advertised
- where there is evidence that a pupillage has not been properly funded
- where there is evidence that training is inadequate
- where there is evidence that improprieties have taken place

Information about sample or 'triggered' visits is provided in Chapter 16 below.

### 3.10 Withdrawal of approval of ATO status

**BTR 38** The Board may withdraw approval from an Approved Training Organisation if it considers, following investigation, that pupillage training provided by the organisation is or has been seriously deficient, or that the organisation has not made proper arrangements for dealing with pupils and pupillage in accordance with the Code of Conduct.

Accredited status as an ATO to provide pupillage training may be withdrawn if the requirements of the BTRs and/or the Code of Conduct are not being met: see BTR 38. Formal notice will be provided.

**BTR 39** The Board will give notice in writing ... in the case of a decision to withdraw approval from an Approved Training Organisation, to that organisation; any person who is undertaking or has agreed to undertake a pupillage in that organisation; and the Inn of which any such person is a member.

Under BTR 40, an organisation may request the BSB to review a decision to withdraw approval, provided that the request is made in writing to the Board within one month of the date when notice of the decision was given. Details of the appeals procedure will be made available when a request is received. ATO status is normally retained pending the appeal.

### 3.11 Responsibilities

Roles and responsibilities of ATOs and supervisors are discussed in Chapter 4 below.

**Note:** Where, for any reason, an ATO and/or supervisor finds themselves no longer in a position to supervise a pupillage to completion (e.g. for reasons of the dissolution of Chambers/ATO, departure of supervisor etc, then the ATO and supervisor are jointly responsible to honour the pupillage and assist the pupil thereby left unsupported to attempt where possible to find alternative provision (sometimes known as a 'rescue pupillage'). A waiver from funding/advertising may well need to be sought and both the ATO and the supervisor should assist with this.

## 4 Supervision of pupils

### BTR35 and Schedule C

- 1 A barrister may act as a pupil supervisor if the barrister: is on the register of approved pupil supervisors kept by the Board; has a current practising certificate; and has regularly practised as a barrister during the previous two years.
- 2 The Board may enter a barrister on the register of approved pupil supervisors if the barrister is approved by an Inn of which the barrister is a member.
- 3 An Inn must approve a barrister as a pupil supervisor if:
  - (1) the barrister has a current practising certificate;
  - (2) the Inn is satisfied that the barrister has the necessary experience and is otherwise suitable to act as a pupil supervisor; and
  - (3) the barrister has submitted an application in accordance with paragraph 5.

#### 4.1 Eligibility as Pupil Supervisor

The BSB may enter a barrister on the register of approved pupil supervisors (BTR Schedule C, para 2) if the barrister is approved by an Inn of which the barrister is a member. Inns must approve a barrister as a pupil supervisor if they fulfil the requirements of Schedule C, para 3. The Inn will then make a recommendation for approval to the BSB as the final point of approval of a supervisor.

BTR Schedule C para 5 (see Appendix B to this Handbook) sets out the rules regarding eligibility to be registered as and to act as a pupil supervisor which are *summarised* below, viz, a barrister will be eligible to be a pupil supervisor if he/she fulfils all of the following:

- has a current practising certificate
- has the necessary experience and is otherwise suitable to act as a pupil supervisor
- has submitted an application in accordance with requirements of the application procedure (supported as required)
- has normally practised in the United Kingdom or another Member State as a barrister or as a member of another Authorised Body for a period of at least six years in the previous eight years
- has, for the previous two years, regularly practised as a barrister and been entitled to exercise a right of audience before every court in England and Wales in relation to all proceedings.
- has undergone pupil supervisor training as provided by his/her Inn (Schedule C, para 6)
- is consequently entered on the register of approved pupil supervisors maintained by the BSB.

In addition to the eligibility requirements summarised above, BTRs Schedule C para 9 requires that a pupil supervisor must, when responsible for supervising any pupil: take all reasonable steps to provide the pupil with adequate tuition, supervision and experience; have regard to any pupillage guidelines issued by the BSB and to the Equality Code for the Bar; and ensure that the pupil prepares for and attends any further training required by the BSB such as advocacy training provided by the pupil's Circuit or Inn.

Once registered with the BSB, a pupil supervisor may take a pupil if his/her chambers or employer is registered as an ATO. Pupil supervisors may only supervise one pupil at a time unless they have the special permission of the BSB (BTR Schedule C, para 10).

Although pupil supervisors in self-employed practice used to be removed from the register of approved pupil supervisors on becoming a QC, under the BTRs the former restriction no longer applies. QCs will nevertheless consider whether their practice will provide the most suitable training for a pupil.

#### **4.2 Suitability, standards and principles for pupil supervisors: good practice**

In addition to the requirements stated above, it is considered desirable and good practice that pupil supervisors should:

- have up to date knowledge of the core competencies and their relevant specialist curriculum applicable to pupils, remaining aware of changes and developments in relevant legal practice
- have understanding of the learning experience, be able to assess learning needs of pupils and hence identify their own teaching/supervisory objectives
- be competent to conduct one-to-one reviews and feedback sessions
- understand and be able to put into practice the process of assessment and have the ability to use formative assessment and feedback for the benefit of the pupil
- be familiar with and understand professional values set out in documents such as the Code of Conduct
- understand developments relevant to the context of pupillage training, such as issues affecting training under the Legal Services Act 2007, the operation of the Legal Services Board (LSB), the operation of the BSB, and the effect of other relevant legislation
- be able to use appropriate technology
- be aware of equal opportunities standards and legislation (such as the DDA and the EWTD), promoting equality and valuing diversity and be able to apply them as a supervisor
- be able to devote sufficient time to the role
- ensure there is a sufficient volume of work available for training
- possess enthusiasm and a personal commitment to supervising his/her pupil
- be sensitive and responsive to the needs of his/her pupil
- be willing to develop individually as practitioner and supervisor
- be aware of the need for and operation of quality assurance and enhancement processes for professional practice

#### **4.3 Procedures for accreditation as pupil supervisor**

In order to become a pupil supervisor, the barrister needs to contact his/her own Inn and complete the necessary application form from that Inn. The Inn will check that the barrister fulfils the criteria, seek references and then inform the barrister that he/she needs to attend a training and accreditation session for pupil supervisors. Inns and Circuits run the training sessions and most attend the session provided by their own Inn. Prospective supervisors may however attend sessions run by an Inn which is not their own, or by a Circuit (of which they may not need to be a member). In such cases the host provider will confirm attendance with the barrister's own Inn. Sessions are run four-five times per year. See section 4.4.5 for details of what is covered by the training sessions.

Once the barrister has had his/her application approved, attended the training session for pupil supervisors, and been considered as having successfully completed the training, he/she will be recommended by the Inn to be placed on the register of accredited pupil supervisors held by his/her own Inn and the BSB. The Register will also record each pupil supervised by the supervisor and the start and end date of each such period of supervision.

All those involved in the supervision of pupils need to undergo training, although some may sometimes assume the role of being an additional supervisor for a short period of time, for example in a particular specialist area. In such cases, the Director of Pupil Training has an over arching role to oversee pupillage arrangements in chambers on a day to day basis.

#### 4.4 Training of supervisors by the Inns of Court and Circuits

##### 4.4.1 Aims of Supervisor Training

The overarching aims of pupil supervisor training are to:

- prepare those members of the profession who are suitably qualified and committed to contribute to the development of the profession to nurture, develop and supervise pupils in order that they might become competent practitioners at the Bar of England and Wales, and be worthy of a full practising certificate
- enable practitioners effectively to engage in training of pupils, as both supervisor and assessor, so that pupils may attain the skills and competencies of pupillage as identified
- enable practitioners to support their pupils, academically, professionally and personally (as adviser/mentor)
- remind practitioners of the formal obligations on pupils and supervisors and the structures relating to supervising pupils

##### 4.4.2 Outcomes of Supervisor training

The specific objectives of pupil supervisor training are presented as outcomes below (in accordance with the aims and objectives of pupillage). Hence, by the end of the training, the intended outcomes are that supervisors will be enabled to:

- understand (and be confident in) their key role as supervisor, and hence their key role in upholding standards and as 'guardian' of the practising certificate
- prepare pupils for practice at the Bar of England and Wales, whether at the Self Employed Bar or at the Employed Bar
- develop further the knowledge, skills and competencies gained by pupils on the Bar Professional training Course (BPTC) and Inns' and Circuits' advocacy training courses in order that pupils can be assessed as competent in the practice of law and thereby gain a practising certificate
- assist pupils in further development of their advocacy skills, both written and oral
- inculcate in pupils a robust professional and ethical approach to practice as a barrister, in accordance with the Code of Conduct
- prepare pupils for practice in a culturally diverse society
- prepare pupils for independent practice (whether at the self-employed Bar or at the Employed Bar)
- furnish pupils with skills and competencies necessary for practice, whether in chambers or as an employed barrister
- encourage pupils to take responsibility for their own professional development
- provide the necessary support for pupils, academically, professionally and as mentor/advisor
- undertake competent assessment of their pupils
- understand the process of issuing the practising certificate
- equip pupils to perform competently in matters in which they are likely to be briefed during the early years of practice

##### 4.4.3 Supervising, teaching and learning

Learning will be largely pupil-centred but it is important for supervisors to be aware of the differences between supervising (guiding) and teaching (delivering and/or facilitating knowledge acquisition). Although supervisor 'contact time' with pupils will vary according to the nature of the placement, the portfolio of the supervisor, the type of chambers and general availability, a minimum amount of contact time should be timetabled. There should, as a minimum, be:

- a formal induction session lasting not less than 1-2 hours at the beginning of each six month period
- regular feedback sessions (monthly as a minimum, but at least weekly is recommended as good practice)
- a formal appraisal session lasting not less than 1-2 hours at the end of each six months
- additional formal assessment meetings, as appropriate to go over specific pieces of work
- additional appraisal meetings where possible
- at least one opportunity for observation by the supervisor (e.g. in advocacy)

For further guidance on good practice, see Chapter 14 below.

#### 4.4.4 Assessment

Supervisors must be fully aware of their equally important role as 'assessor', although assessment of pupils will vary according to the nature of the work undertaken. In certain situations, the majority of work will be written, whilst in others attendance at Court will predominate. Assessment of pupils will therefore vary accordingly (see Chapter 9).

#### 4.4.5 Indicative Content to be covered in Supervisor Training

The Inns of Court and Circuits are autonomous bodies so a detailed framework for Supervisor training prior to recommendation for accreditation by the BSB is not specified. However the BSB will wish to ensure that best practice is maintained through Inns and Circuits and will maintain a broad oversight of standards. It is expected that the following will be covered:

1. **An interactive 'ice breaker' session** to discuss the aims and philosophy of pupillage and reasons for engaging in supervision.
2. **Regulations and the BSB** - based on the framework and requirements detailed in this Handbook (also available online and on CD ROM).
3. **Roles and responsibilities** – the role as trainer/manager should be explained by an experienced pupil supervisor, particularly the way that 'supervision' differs from 'teaching' and how various teaching, supervising and learning styles can contribute to the overall process.
4. **Induction** – areas to be covered (physically as well as theoretically) should be explained (see Chapter 14, para 14.2 below).
5. **Standards and competencies** – this should be based on the need to emphasise the generic core standards and competencies that must be attained by all pupils before they are signed off (i.e. not simply the checklist of tasks to be completed). See Appendix H for details.
6. **Curriculum** – this should cover (without going into excessive detail) the ways in which subjects and checklists can be used for specialised areas.
7. **Compulsory courses and Advocacy** – again the needs and requirements should be emphasised, but with a particular emphasis on advocacy and how supervisors may assist in, and share responsibility for, ensuring that the standard of written and oral advocacy is at the correct level. Attention should be drawn to the Dutton<sup>4</sup> and other current criteria, e.g. by the ATC. The role of the ATC should be emphasised and how the Hampel method is used in training. ATC representation would be helpful in such sessions, if this is possible. Pupil supervisors should also be encouraged to attend ATC training, although this is not essential.

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<sup>4</sup> The Dutton Definition and Criteria are set out in Appendix M of this Handbook.

8. **Review and monitoring of pupils** – this section could be divided into how to teach/supervise and give good feedback; and how to review pupils' work effectively.
9. **Appraisal** – formal appraisal, at the end of each six should be discussed and distinguished from 'feedback' in general (proformas are available – see Appendix N). Such a process may well already be in place at the Employed Bar where companies take pupils.
10. **Assessment** – the role of the supervisor in assessing the pupil as competent and worthy of a practising certificate should be emphasised, including exactly how supervisors should assess against the checklists (assignments completed) and competencies (i.e. skills attained and demonstrated as in Appendix H).
11. **Ethics and the Code of Conduct** – without going into detail, reference can be made to some key sections, with some examples. An emphasis on ethics and client care is needed.
12. **Provision of opportunities** – an emphasis can be made here on the need to ensure that pupils are given sufficient opportunities for work and learning, and that this is fairly apportioned.
13. **Equality & Diversity** – policy documentation may be circulated in advance and an outside speaker/expert should ideally be involved. This section should also cover examples and potential operational pitfalls.
14. **Paperwork requirements** – a short session should cover the procedures and documentation, such as registration, certification etc, and including funding, payment and cash flow issues. Information on sick leave, holidays, special circumstances should be included. Such information could probably consist of references to this Handbook.
15. **Discussion session** – this could be a considerable element of the training, focussing on case studies to provide potential supervisors with the knowledge and skills to deal with operational dilemmas and difficult or unusual situations (testing the application of material in the general sections).
16. **Plenary question and answer session**

The above outline for training is indicative and not definitive. Sections may be combined, and /or consist of drawing attention to places where guidance is provided on various matters in the Handbook. Training should be of at least 4-5 hours' duration including breaks (i.e. a day long session 11.00 am until 4 pm, or two evening sessions 5.30 to 8.00 pm including breaks). Attendance at all sessions is required for accreditation. Those who need to refresh their training may attend the latter discussion part only but attendance at the entire training would be preferable.

#### **4.5 Accreditation, reaccreditation and de-accreditation of supervisors**

##### ***Accreditation of pupil supervisors***

Once training has been completed, then those who have completed the training will be first registered/approved by their Inn and then recommended for registration/approval with the BSB. The latter is likely to follow.

##### ***Accreditation of those who provide training for supervisors***

Managed through the Inns' and Circuits' Education Committees, there is currently no requirement for training and accreditation of those who train supervisors. They are selected by the Inns according to experience and expertise. This may be reviewed in the future.

**Re-accreditation of supervisors**

Accreditation will be valid for five years as a maximum, whether or not the supervisor has supervised a pupil. Where a person has not supervised for five years then accreditation will lapse and training must be repeated. Pupil supervisors will thus be removed from the register if they do not take a pupil for more than five years, but they may retrain (*ab initio*) unless there is anything to prohibit this. Where a person has not supervised (i.e. not supervised a pupil for at least three months in that period) for three years, then 'refresher' training must be undertaken. This will normally consist of the second part of standard training (i.e. discussion of case studies and plenary question and answer session) although the introductory and formal session may be attended if wished.<sup>5</sup>

**Removal from the Register of Pupil Supervisors**

**BTRs Schedule C1, para 7** The Board may remove a barrister's name from the register of approved pupil supervisors if the barrister: ceases to practise as a barrister; or is suspended from practice as a barrister; or requests the Board in writing to be removed from the register; or fails to complete any training required under paragraph 6; or is found by the Board to be unsuitable for any reason to act as a pupil supervisor; or has not acted as a pupil supervisor for the previous five years.

If the Board decides that a barrister should be removed from the register of approved pupil supervisors, it will notify the barrister and the relevant Inn (Schedule C para 8). It should be noted that Disciplinary Tribunals have the power to refer pupil supervisors to their Inn, whether or not charges are proved against them, if the circumstances of the complaint are relevant to the Barrister's capacity to act as pupil supervisor: Disciplinary Tribunal Regulations 19(11). This may not lead to removal from the register but it should be borne in mind. A barrister whose application to be approved as a pupil supervisor is rejected or whose name is removed from the register of approved pupil supervisors may request a review of that decision (see Schedule C para 14).

**4.6 Roles and responsibilities of organisations and supervisors**

It is important for roles of ATOs, supervisors and pupils to be clearly understood by all parties, to ensure that supervisor(s) and pupils are fully aware of the extent of one another's responsibilities, while the supervisor must advise and support, there is a point at which responsibility lies with the pupil and it is important that both understand the supervisor's contribution to supporting the pupil and where the supervisor's responsibilities end.

**Roles and Responsibilities of the ATO**

**BTR 37** The Board will designate an organisation as an Approved Training Organisation if it is satisfied: (a) that one or more registered pupil supervisors who are available to provide pupillage training practise in the organisation; and (b) that the organisation has made proper arrangements for dealing with pupils and pupillage in accordance with the Code of Conduct.

Work that pupils will see and do during pupillage will vary according to the chambers or organisation where he/she is based and the variety in the individual practice of the pupil supervisor. In accordance with BTR 37(b) above, all ATOs must ensure that a pupil obtains:

- Adequate supervision
- Adequate resources to enable the timely completion of pupillage
- An understanding and appreciation of the operation in practice of the rules of conduct and etiquette at the Bar

<sup>5</sup> This new requirement, as approved by the BSB, will be introduced as soon as practicably possible.

- Sufficient practical experience of advocacy to be able to prepare and present a case competently
- Sufficient practical experience of conferences and negotiation to be able to undertake the same competently
- Sufficient practical experience in the undertaking of legal research and the preparation of drafts and opinions to be able to undertake the same competently

### ***Roles and Responsibilities of Pupil Supervisors***

#### **BTRs Schedule C1, para 9**

Duties of Pupil Supervisors: A pupil supervisor must when responsible for supervising any pupil: take all reasonable steps to provide the pupil with adequate tuition, supervision and experience; have regard to any pupillage guidelines issued by the Board and to the Equality Code for the Bar; and ensure that the pupil prepares for and attends any further training required by the Board such as advocacy training provided by the pupil's Circuit or Inn.

Pupil supervisors must therefore (in order to fulfil the above):

- Provide/organise induction for pupils (in conjunction with the ATO)
- Establish and maintain regular contact with the pupil, ensuring his/her accessibility when advice is needed
- Ensure resources are in place (in conjunction with the ATO)
- Provide learning opportunities for the pupil
- Provide timely, effective and constructive guidance, advice and feedback on the pupil's work
- Act as assessor of the pupil's work
- Ensure outcomes of core areas are met and competencies attained to the required standard
- Instil professional ethics and conduct, ensuring that the pupil is aware of the need to exercise probity and conduct him/herself according to ethical principles (and of the implications of misconduct)
- Ensure that compulsory courses are undertaken and passed
- Ensure the pupil is initially registered, and signed off after the first six in order to be able to obtain a practising certificate
- Ensure the pupil is covered through his/her own insurance when providing legal advice
- Comply with other rules or guidelines relating to pupillage issued by the BSB

In addition, Pupil supervisors should (as a matter of good practice):

- Act as mentor/advisor/counsellor to pupils (as well as supervisor)
- Ensure outcomes of selected/optional specialist areas are met
- Perform appraisal of pupils (in addition to feedback) as appropriate in order to monitor the pupil's overall progress
- Support the pupil also in non-professional/academic areas, e.g. where some counselling might be needed (or ensure that such support is available)
- Deal with any other issues arising (e.g. conduct, complaints, special circumstances)
- Assist in placing the pupil if he/she is unable to continue supervision for any reason
- Ensure that the pupil is aware of other sources of advice (e.g. Inns, BSB), including careers guidance, health and safety and equal opportunities policy
- Maintain the necessary supervisory expertise, including the appropriate skills, to perform the role satisfactorily, supported by relevant continuing professional development opportunities.



## 5 Applications and Admission and Registration of Pupils

### 5.1 Advertising requirements

- 5.1.1 All vacancies for pupillages must be advertised in accordance with the Code of Conduct, Annex R, para 4.

#### **Code of Conduct, Annex R, para 4**

All vacancies for pupillages must be advertised on a website designated by the Bar Council and the following information must be provided:

- (a) The name and address of chambers
- (b) The number of tenants
- (c) A brief statement of the work undertaken by chambers e.g. "predominately criminal"
- (d) The number of pupillage vacancies
- (e) The level of award
- (f) The procedure for application
- (g) The minimum educational or other qualification required
- (h) The date of closure for the receipt of applications
- (i) The date by which the decisions on the filling of vacancies will be made.

To this end and to ensure fairness, a website designated by the Bar Council is in place: 'Pupillages.com' (<https://www.pupillages.com>). The website incorporates the 'Pupillage Portal' for online applications which replaced OLPAS (Online Pupillage Application Service) in April 2009. Full details of the application procedure for pupils are provided on the website.

5.1.2 The advertisement must contain all information required in accordance with the Code of Conduct, Annex R, para 4 – reproduced above. To reduce the risk of receiving applications from candidates who do not fully understand the type of practice which chambers conduct, or the selection criteria which will be applied, advertisements should give a full account of the type of work done and the qualities (positive and negative) which will be especially relevant in the selection process.

5.1.3 An advertisement of a pupillage vacancy must be on site for a minimum of two weeks from the date that it has been placed on the site. If the pupillage is unfilled after the recruitment process has taken place, then it must be re-advertised. All ATOs are encouraged to recruit pupils through the online system (Pupillage Portal). Where an ATO decides that it does not wish to use the online system, it should avoid any action which, whether directly or indirectly, may undermine or be seen to undermine, the Pupillage Portal system (for example, offers may not be made except in accordance with the timetable prescribed by the online system). For further details see:

<http://www.barstandardsboard.org.uk/standardsandguidance/codeofconduct/section2-annexestothecode/annexer-thepupillagefundingandadvertisingrequirements2003/>

5.1.4 Where pupillage is at the Employed Bar, then a fair and open advertising process must take place and must be advertised on pupillages.com. Waivers may be applied for in exceptional circumstances but a fair and open advertising process must have taken place at an earlier stage. For example, this may occur at an earlier stage of appointment to an organisation or department. The process used for recruitment to pupillages at the Employed Bar may be subject to scrutiny and adherence to the Code of Conduct in the same way as for the Self-Employed Bar, and fairness and equality of opportunity will need to be demonstrated. Where a waiver from advertising externally is granted to the Employed Bar this may be open-ended.

5.1.5 The Pupillage Portal (unlike the former OLPAS), operates just one season, which starts in March each year. A clearing system operates from 1 October each year. Details of the application procedure, timing and vacancies for those chambers that do not actually process their vacancies through Pupillage Portal application process can be found on the

Pupillage Portal website and elsewhere. As mentioned above, chambers that do not use the online system should avoid any action which may undermine the Pupillage Portal system, for example, offers may not be made when the online system is open.

### 5.1.6 Waivers from advertising requirements

The Code requires (Annex R, para 4) that 'All vacancies for pupillages must be advertised on a website designated by the Bar Council' in line with the requirements that are prescribed in the Code. The requirement to advertise all pupillages lies with chambers and if they cannot or do not wish to advertise a particular pupil/pupillage then they have to apply for a waiver from this requirement to the Qualifications Committee of the BSB. A pupil or prospective pupil cannot apply for a waiver.

Where pupillage is at the Employed Bar, then waivers from advertising will need different consideration and evidence will normally need to be provided concerning the rationale for not advertising and information about how a fair recruitment process was undertaken at an earlier stage. Provided the employee was originally engaged in open competition (for which a statement/evidence should be provided), a waiver may well be granted.

Waivers from advertising requirements will only be granted in exceptional circumstances. Each case will be considered on an individual basis on its own merits. The relevant form must be used where an application is sought for a waiver from pupillage advertising requirement. A formal application must be made to the BSB, by the ATO. The Pupillage Funding and Advertising Panel of the BSB Qualifications Committee deals with these applications. Details of procedures are provided at:

<http://www.barstandardsboard.org.uk/Educationandtraining/whatispupillage/filedownloads>

## 5.2 Application and admission: General Principles

5.2.1 The admission of an individual applicant for pupillage is managed by the chambers or other ATO but subject to the fulfilment of the requirements for advertising and funding and the fulfilment by the candidate of the entry requirements.

5.2.2 Applications may be made via the online Pupillage Portal system or in response to advertisements (pupillages.com and elsewhere). Applications may be made for pupillage at any stage but are typically made during the Academic Stage (QLD/CPE or GDL), during the Bar Course or after completion of the Bar Course (BVC or BPTC from 2011).

<p><b>BTR 28</b> Before commencing the Professional Stage, a person must have completed (or been exempted under Part VII of these Regulations from) the Vocational Stage.</p>
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5.2.3 ATOs must abide by the minimum entry requirements for pupillage as set down and amended from time to time by the BSB: see BTR 28.

5.2.4 ATOs must operate an admissions policy that is fair, based on merit and non-discriminatory. Applications from all sections of society (regardless of race, gender, disability, age, religion or belief, or sexual orientation) should be welcomed as long as requirements are met. It is customary, but not a requirement, for a pupillage contract to be put in place.

## 5.3 Entry requirements

Entry requirements are summarised as follows:

- The Vocational Stage of training (Bar Vocational Course or Bar Professional Training Course), must be successfully completed before pupillage may be commenced.

- Applicants must normally have been Called to the Bar before commencement of pupillage. Where Call has not taken place before commencement of pupillage then it must take place before the completion of the first six. The first six months of pupillage may be undertaken, in whole or in part, before being Called. However the whole of the second six months (including any periods of external training) must be undertaken after Call.

For entry requirements for the Bar Course see the Bar Professional Training Course Handbook, section B2. For requirements for Call to the Bar see also BTR 2.

### **5.4 Exemptions from Training Requirements**

Applicants who have not met the standard requirements (as defined in BTR 28 and above) may apply under Part VII of the BTRs - Exemptions from Training Requirements. Applicants of this type, for example those transferring from overseas jurisdictions, transferring solicitors etc, are required to take and pass the Bar Transfer Test [formerly known as the Bar Aptitude Test]. Exemptions from some or all of the Bar Transfer Test may be permitted. Applications for Dispensations and Waivers from Pupillage Requirements should be made by applying to the Qualifications Committee. For information and guidance, see <http://www.barstandardsboard.org.uk/Educationandtraining/whatispupillage/filedownloads>.

### **5.5 Time limits**

Multiple applications may be made after completion of the Bar Course (BVC/BPTC), such that a candidate must start pupillage within five years of passing the BVC, BPTC, or Bar Transfer Test. The time limit for starting pupillage can be extended in individual cases if there are sufficient grounds. Applications should be made to the Bar Standards Board.

### **5.6 Registration of pupillages**

All pupillages must be registered with the BSB on the appropriate registration form before pupillage is commenced (see website, as above). Periods of pupillage undertaken prior to registration will not be recognised. The Supplementary Information Survey must be submitted at the same time. Periods of time spent in chambers before registration will not count towards pupillage. Registration forms must be returned to the Training Compliance Assistant in the Standards & Quality Section of the BSB.

Where possible, registration forms should be returned two weeks prior to commencement of pupillage. The name of the designated pupil supervisor and a specific commencement date must be stated. It is therefore advisable that such arrangements are made in advance. Registration will be confirmed by email from the BSB. If confirmation is not received then pupils should contact the BSB.

### **5.7 Changes in pupillage**

The BSB keeps records of all pupillages and any change during pupillage must be notified, using the prescribed form (see Appendix K). The periods of time involved must be noted. There is no specified maximum amount of time that a supervisor may be absent or unavailable (e.g. overseas or ill) before an alternative supervisor must be appointed. However, it is the duty of the supervisor to ensure that the BSB is contacted for advice (when a material change occurs) so that special provision can be made where necessary. Detailed information must be provided, signed off by the Head of Chambers or other person authorised by the Head of Chambers in the case of a pupillage in chambers. For a pupillage in employment, it should be signed by a person authorised by the employer, normally the Director of Pupil Training.

### **5.8 Pupillage contract**

The BSB recommends that ATOs draw up a contract before the commencement of pupillage, between the ATO and the individual pupil, laying out in detail what the ATO policies and

procedures are during pupillage as well as the grounds on which pupillage might be terminated.

**Note:** ATOs and supervisors have joint obligations to pupils in the event of the departure of a supervisor or the dissolution of an ATO. There is an obligation to honour the commitment. In the case of the supervisor ceasing practice, then the obligation may be taken over by another. The ATO also has responsibilities in continuation of the award (which may be covered via some form of insurance. In many cases a 'rescue pupillage' may be possible, but waivers may be necessary from funding and advertising requirements.

### 5.9 Other ways of completing pupillage (reductions, external training, part time)

**BTR 59** The Board may grant exemptions from part or all of: the Academic Stage, the Vocational Stage, and/or the Professional Stage of Training.

It is possible for reductions and exemptions of pupillage to be granted by the BSB, in accordance with BTR 59.

Further information and guidance is available separately on the following:

- **External Training** - undertaking training outside England and Wales
- **Reductions in Pupillage** - due to time spent working in a legal environment
- **Qualified Legal Practitioners** – for applicants who are qualified as solicitors, Northern Irish Barristers, Scottish advocates, common law practitioners or legal academics
- **Deferred pupillages** - to consider the circumstances where pupillages may be deferred
- **Part time pupillages** - the BSB is of the view that, where appropriate, efforts should be made to make part time pupillages available

Please consult the BSB website or contact the Qualifications Department of the BSB.

## 6. Recruitment and Selection for Pupillage

### 6.1 Principles of recruitment and selection

ATOs must approach the recruitment of those wishing to practise at the Bar of England and Wales in a responsible and reasonable way and thereby ensure fairness to applicants and a secure future not only for themselves but also for the profession.

Key principles in recruitment are as follows:

- That methods of selection and recruitment must be accessible, fair and just (for information about online and other applications systems, as well as advertising requirements, see Appendix D and Appendix E)
- That the Bar is strengthened and enriched by recruiting practitioners from all sections of society
- That ATOs must take into account relevant legislation and the provisions of the Equality & Diversity Code for the Bar
- That good equal opportunities practices should permeate the whole recruitment and selection process
- That the academic (and other, personal) demands being faced by potential applicants should be respected, in terms of availability for interview
- That the financial predicament of many applicants should be taken into account.

### 6.2 Promotional activities

It is recognised that ATOs have a legitimate interest in promoting themselves amongst those who may be interested in joining them. This may take the form of preparation and distribution of printed and electronic materials, the funding of prizes and competitions and the hosting of social events.

The BSB recommends that ATOs keep their promotional activities under review and, in determining priorities, take into account the importance of promoting themselves amongst the widest possible number of potential entrants to the profession. Where an ATO intends to visit a University (or other Higher Education Institution, private College etc), they should advise the institution's careers service in advance. If possible, invitation to attend any event should be extended to students in any neighbouring Universities or HEIs. Promotional activities directed at first or second year undergraduates should focus on careers at the Bar generally as well as a particular ATO or area of specialism.

### 6.3 Mini pupillages and work experience

A mini pupillage is often the first experience a person will have of the Bar. ATOs should therefore seek to ensure that the opportunities to take a mini pupillage are made available as widely as possible. Mini pupillages are not regulated by the BSB.

However, where the completion of an assessed mini-pupillage is made a condition for obtaining pupillage itself (effectively the first part of the selection and recruitment process), ATOs must advertise its mini-pupillages and comply with the Equality & Diversity Code for the Bar when selecting individuals for a mini-pupillage. A list of mini pupillages offered and details of the recruitment process must be maintained (for three years) and made available to the BSB on request.

The distinction should be made between a formal mini pupillage and 'work experience' opportunities that do not and will not count formally towards pupillage. ATOs may wish to consider taking positive action to make mini pupillage and work experience opportunities available to groups that are under-represented at the Bar.

#### **6.4 Selection procedures and criteria**

- 1 ATOs must formally agree and set out selection procedures and criteria. When developing their selection procedures, ATOs should have regard to any relevant guidance issued by the Bar Standards Board and in particular to the Equality & Diversity Code for the Bar. (See Equality & Diversity Code 'Recruitment', reproduced here in Appendix E).
- 2 All pupils should be selected through the same selection procedure. Special provision may be made for the selection of those with exemptions and reductions or waivers.
- 3 Where an ATO is not a member of the Pupillage Portal system, it is recommended that it develops and uses an application form which draws out the ways in which candidates fulfil the criteria for selection, rather than asking for the submission of a curriculum vitae alone. Good practice includes the use of written exercise(s) which can draw out analytical skills and written communication. Such exercises should however be equally accessible to those who may not yet have undertaken a law degree, or those at various stages of their legal studies if such candidates are to be considered.
- 4 Decisions on applications must be taken by more than one member of the ATO. All selections must be made against written objective and explicit selection criteria.
- 5 Selection procedures in commercial organisations will also have regard to corporate policies.

#### **6.5 Interviews**

- 1 Wherever possible, ATOs should not hold interviews at times when potential applicants may be involved in final preparation for and sitting examinations at an institution of higher education.
- 2 Where interviews or other parts of the selection process take place during term time, ATOs should treat sympathetically any request for an alternative date made by the applicant for academic or other good reasons.
- 3 The conduct of interviews must accord with the Equality & Diversity Code for the Bar (Section A1 and Annex B) and good equal opportunities practices.
- 4 ATOs must ensure that at least one member of any interview panel has undertaken an appropriate course of training in recruitment practice and/or equality and diversity training. Ideally this should be all or at least two members. Members of the panel who have not been trained should be given clear guidance by the ATO on how to conduct themselves when interviewing.
- 5 Where persons invited to interview live some distance from the ATO, it should give serious consideration to paying or making a contribution towards their travel expenses.
- 6 Where possible, ATOs should advise applicants at interview when they are likely to reach a decision on their pupillage applications.

#### **6.6 Equality and Diversity issues in recruitment**

- 1 The Legislative framework

The Sex Discrimination Act 1975 and the Race Relations Act 1976, as amended by the Courts and Legal Services Act 1990, place a duty on barristers not to discriminate on the grounds of race or sex. Individuals may bring complaints that they have suffered discrimination to a county court within six months of the alleged act of discrimination. Chambers as trade organisations and as providers of goods and services are under a duty not to discriminate on grounds of disability in the offer of pupillages or in the terms on which they are offered. Under the Disability Discrimination Act 1995 (DDA), chambers have a duty to make "reasonable

adjustments”, that is take any steps which it is reasonable to take to reduce or remove any substantial disadvantage to a disabled person caused by any physical features of their premises or by policies or procedures they operate. Age discrimination is prohibited by the Employment Equality (Age) Regulations 2006. The date for implementation of the Equality Act 2010 (aimed to supersede the DDA) is currently not determined.

### 2 The Code of Conduct

Para 305.1 of the Code states that: ‘a barrister must not in relation to any other person (including a client or a professional 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.’

Paragraph 404 of the Code requires that: the Head of Chambers must take all reasonable steps to ensure that the affairs of chambers are conducted in a manner which is fair and equitable for all barristers and pupils. Pupillage Training Principals undertake a similar responsibility in relation to ATOs at the Employed Bar.

Paragraph 305.2 of the Code states that: ‘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 justifiable.’

Guidance on the interpretation of paragraph 305.2 of the Code, relating to avoidance of discrimination in pupillage and tenancy recruitment, was issued to all chambers in September 2002 and can be found in the appendices to the Code and on the BSB website.

### 3 The Equality and Diversity Code

The Equality and Diversity Code for the Bar was adopted by the Bar Council in 1995 and makes detailed recommendations on the selection of pupils and tenants, the distribution of work in chambers, the conduct of pupillage, the monitoring of equality and the adoption of procedures for responding to complaints. All sets of chambers have been issued with the Equality and Diversity Code and pupil supervisors must be familiar with steps that have been taken to implement it in the ATO.

Information and guidance on Age Discrimination in pupillage is provided in Annex C of the Equality and Diversity Code. Guidance on Reasonable adjustments in pupillage for those with disabilities is in Annex D of the Equality and Diversity Code.

### 4 Queries on Equality and Diversity Issues

Queries or complaints regarding equal opportunities or discrimination issues can be discussed in confidence with the Bar Council/BSB Equality and Diversity Advisers, on 020 7242 0082. Advice is available on options and/or course of action, as well as concerning specialist organisations that may be able to provide representation or other assistance if pupils wish to pursue a grievance. Various organisations that may be of assistance are listed in Appendix P.

#### **6.7 Offers and acceptances**

1 The offer of a pupillage and its acceptance by the person to whom it is made will give rise to a legally binding contract for education and training<sup>6</sup>. Offers of pupillage may be made by ATOs through Pupillage Portal (if a member) or otherwise if not included in Pupillage Portal. A record should be kept of decisions taken, with reasons. Unsuccessful candidates should be given feedback if possible, and when this is asked for. (Equality & Diversity Code, Annex B, p. 79). An example of a contract is available from the BSB on request.

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<sup>6</sup> *Edmonds v Lawson* 2000 [QB 501] (CA)

2 The offer of a pupillage must contain the date of commencement, details of supervision arrangements, the details of the award to be made to the pupil and such other information as the Bar Standards Board may, from time to time, require. The name of the supervisor should be provided, but the pupil should otherwise be told a reasonable time before the pupillage begins who his or her first supervisor will be (so that a meeting can be arranged before pupillage begins).

3 Except with the prior approval of the Bar Standards Board, no offer of a pupillage may be made without including a provision for the payment of an award at the level prescribed by the Bar Standards Board.

4 All offers must remain open for at least 14 days, except in the case of clearing where they must remain open for at least 7 days (which must be made clear by the ATO). An applicant should respond as quickly as possible to any offer of pupillage which is made. Applicants should not accumulate offers and may not retain more than two offers for more than 7 days, whether the online system is used or not. An applicant who accepts an offer of pupillage should withdraw all other applications for pupillage and make no further applications.

5 For pupillage providers in the Pupillage Portal system, the closing date for applications is normally the end of April (e.g. specifically 27 April 2010). The autumn Season was discontinued in 2009.

6 No offers may be made before the date/time specified (e.g. 14h00 on 2 August 2010) in an applicant's penultimate year of academic study (i.e. during the second year for law undergraduates and final year for non-law undergraduates). (see also above, 5.1.3)

7 All pupillages must be registered with the BSB before commencement (see above, Chapter 5, para 5.6).



## 7 Funding and Financial Matters

### 7.1 Funding of pupillage

1 All pupillages must be funded in accordance with the Code, Annex R, paras 1-2.

#### **Code of Conduct, Annex R**

1. The members of a set of chambers must pay to each non-practising chambers pupil by the end of each month of the non-practising six months of his pupillage no less than: (a) £833.33 plus (b) such further sum as may be necessary to reimburse expenses reasonably incurred by the pupil on: (i) travel for the purposes of his pupillage during that month; and (ii) attendance during that month at courses which he is required to attend as part of his pupillage.

2. The members of a set of chambers must pay to each practising chambers pupil by the end of each month of the practising six months of his pupillage no less than: (a) £833.33; plus (b) such further sum as may be necessary to reimburse expenses reasonably incurred by the pupil on: (i) travel for the purposes of his pupillage during that month; and (ii) attendance during that month at courses which he is required to attend as part of his pupillage; less (c) such amount, if any, as the pupil may receive during that month from his practice as a barrister; and less (d) such amounts, if any, as the pupil may have received during the preceding months of his practising pupillage from his practice as a barrister, save to the extent that the amount paid to the pupil in respect of any such month was less than the total of the sums provided for in sub-paragraphs (a) and (b) above.

3. The members of a set of chambers may not seek or accept repayment from a chambers pupil of any of the sums required to be paid under paragraphs 1 and 2 above, whether before or after he ceases to be a chambers pupil, save in the case of misconduct on his part.

2 From 1 September 2010, it will be considered good practice for the members of a set of chambers or other ATO to pay each pupil a minimum of £12,000 per annum pro-rata.<sup>7</sup> It is anticipated that some chambers and most organisations with salaried employees will pay more than the minimum. This means that during the non-practising six pupils are expected in future to be paid no less than £1,000 on or before the end of each month of the non-practising six months of pupillage, plus further sum(s) necessary to reimburse expenses incurred by the pupil for travel for the purposes of pupillage and for attendance at compulsory training courses, as well as the actual cost of the courses. (This does not include travel between the pupil's home and chambers/place of work, or travel for the purposes of the pupil's own practice as a barrister.)

It should be noted that income during the first six is liable to income tax where the taxable amount exceeds the minimum permissible. For those receiving the minimum payment, the sum is likely to be below that at which there is liability for the payment of income tax, although this should be checked as appropriate. The amount of the payment will be kept under review.

In *Edmonds v Lawson*,<sup>8</sup> the Court of Appeal held that, in general, pupillage was a contract of education and training rather than apprenticeship and therefore pupils were not entitled to the national minimum wage. If, however, as part of a pupillage contract a pupil is required to carry out any duties or tasks which go beyond that which is part of education and training, then pupillage may be defined as an apprenticeship, with entitlement to the national minimum wage

<sup>7</sup> The sum as currently specified in the Code of Conduct, Appendix R, will rise to £12,000 once the proposal, which requires a change to the Code of Conduct, is formally accepted by the LSB.

<sup>8</sup> *Edmonds v Lawson* 2000 [QB 501] (CA)

for those aged 26 or over. If in the second six a pupil has earned fees in excess of the sum prescribed by the requirements in the Code, then chambers may deduct the excess from future payments. Chambers are not permitted to claim back any part of the minimum award received.

### 3 Fees (Non-practising six)

In the non-practising period of pupillage pupils may accept a noting brief with the permission of the pupil supervisor or Head of Chambers (Para 802 Code of Conduct). Payment for such a noting brief should be paid directly to the pupil by the professional client of the Legal Services Commission and the fee note should therefore be raised in the name of the pupil.

Pupils may also be entitled to receive payment for any work done for a barrister, which because of its value, warrants payment (para 805 of the Code). An example may be if the barrister can send out the pupil's work with minimal alterations in his or her name. However, if a pupil is in receipt of a chambers award, this may stipulate that the award is in lieu of any remuneration that they might otherwise have expected to receive. Any income earned during the non-practising six months for any of the work above is liable for income tax.

### 4 Fees (Practising six)

During the practising six, the members of a set of chambers (or the employing organisation) must pay to each practising pupil by the end of the practising six months of pupillage no less than a total of £5,000, plus such further sum(s) as may be necessary to reimburse expenses reasonably incurred by the pupil for travel and attendance at compulsory training courses. The amount of fees (net) that the pupil may receive from practice as a barrister may be set against the minimum sum. For information about liability for income tax, pupils are advised to consult their local tax office. Information on taxation, VAT etc is provided as part of the compulsory Practice Management Course to be undertaken by each pupil.

The amount earned in the second six months will vary widely from pupil to pupil. If an income guarantee has been received, a pupil may be required to pay over all receipts to chambers until they have recouped their money. It is essential that pupils establish at the beginning of pupillage how the financial arrangements will be worked out. It is also essential that complete and accurate accounts of fees received are kept.

### 5 The Employed Bar

Where pupillage is in the Employed Bar, then a salary will be in place so the requirement for a minimum level of funding will be less relevant, as long as the minimum wage (on which the above is based) is adhered to.

## 7.2 Waivers from pupillage funding requirements

1 The Code (Annex R, paras 1-3) requires that all ATOs fund their pupils in line with the minimum funding requirements prescribed in the Code. The requirement to fund pupils lies with the ATO, and an ATO must apply for a waiver from the Pupillage Funding Regulations to the Qualifications Committee of the BSB if it does not or cannot fund a particular pupil. It is not possible for a pupil to enter into an agreement with chambers to undertake an unfunded pupillage or for pupils themselves to apply for a waiver from the pupillage funding requirements.

2 A pupil or prospective pupil cannot apply for a waiver. It is not acceptable for a pupil to undertake an unfunded pupillage in a set of chambers which is prepared to take on a pupil but cannot provide funding. Even if no funding is required by the pupil (due to assets or a loan) an application for a waiver must still be made, and may not necessarily be granted. Where pupillage is at the Employed Bar, then a salary will be in place, so the concept of a waiver from funding will not pertain. Waivers from advertising will need different considerations and evidence will normally need to be provided concerning the rationale for not advertising and

information about how a fair recruitment process was undertaken at an earlier stage. Waivers from funding requirements will only be granted in exceptional circumstances. Each case will be considered individually on its own merits.

The relevant form must be used where an application is sought for a waiver from pupillage funding. A formal application must be made to the BSB, by the ATO, not the pupil in question (if there is one). The Pupillage Funding and Advertising Panel of the Qualifications Committee of the BSB deals with these applications. Details of procedures are provided at <http://www.barstandardsboard.org.uk/Educationandtraining/whatispupillage/filedownloads/>

### 3 International students

International students sometimes wish to complete pupillage in England and Wales and may not require funding, due to sponsorship from their home jurisdictions. Such arrangements promote a desirable spread of good practice throughout the common law world. However, there is a need to ensure that any such proposal would not detract from the system of providing pupillages by means of fair and open competition, and funded accordingly, to prospective members of the Bar of England and Wales. Otherwise, in the event of a non-return overseas, the fairness of the system may be impaired. Exceptionally, it may be possible for slightly different arrangements to be put in place for overseas candidates in such circumstances. There are merits and disadvantages of a shorter type of placement for overseas candidates. But, with no assessment or formal 'signing off' being considered, this type of training does not have the same status as pupillage and does not formally count towards pupillage. Waivers may be applied for but the BSB will guard against abuses of the system and waivers will only be exercised in the most exceptional circumstances.

### 4 Mature students

Candidates who claim that they are not in need of funding by virtue of other means of support, such as transferring mature students with assets that render funding unnecessary, are not entitled to an exemption from the funding requirements. An application for a waiver may be made, but these may not necessarily be granted, save in exceptional circumstances.

## 7.3 Financial matters (fees, funding, taxation and expenses)

### 1 Taxation issues

Although pupils may not be earning much money, it is important that they record expenses accurately, as they may be able to offset them against taxable income at a later date. The level at which compulsory funding is set means that pupils earning the minimum are unlikely to have to pay income tax in their first six. It is possible that earnings in the second six may be subject to taxation, particularly where a higher award is given.

Pupils may choose how their pupillage award should be taxed. The choice is:

- The pupillage award in respect of the pupil's first six months will continue to be tax-free, but the award in respect of the second or subsequent six months will be included as an income receipt in the Schedule D Case II computation for the year of receipt, or
- Both the first and second six awards are taxable in the fiscal year of receipt under Schedule D Case VI. In computing Case VI income, for this purpose, expenses incurred by the pupil (for example the cost of travelling) will be deductible in exactly the same way as they are under Schedule D Case II rules (the "revenue" and "wholly and exclusively" tests).

Pupils should contact the Inland Revenue or Customs and Excise or seek advice from a qualified tax accountant for more details.

## 2 Council Tax

Pupils are not automatically exempted from council tax as they do not meet the definitions of a student or apprentice set out in the Council Tax. However, they may be eligible for Council Tax Benefit if they are on a low income and have savings of less than £16,000. Further details may be obtained from the local Department of Work and Pensions' Council Tax office at the pupil's local authority. Further information about tax and insurance/national insurance issues is provided as part of the compulsory Practice Management Course, provided by Inns and Circuits.

## 3 Payment of travel expenses to pupils

As mentioned above, ATOs are expected to pay travel expenses for pupils in certain circumstances. This is particularly important where there is extensive travel but limited fees. It is not as necessary where funding or fees are very extensive. It can be helpful and good practice for ATOs to:

- pay a monthly sum in advance to cover travel costs
- reimburse pupils next day after they return from court (on submission of form for travel expenses)
- pay the predicted cost of travel prior to pupils going to a court away from their place of work (e.g. London) with any difference reimbursed promptly on return from court
- fund a London travel card (if London based)
- ask pupils in advance of commencement of pupillage to determine what financial assistance is likely to be needed

It is inappropriate for ATOs:

- not to have administration in place for payment of travel costs
- not to make clear who is to be contacted if travel costs become an issue
- to make pupils reluctant to ask about travel reimbursement
- to fund only 50% of travel costs, without making it clear to pupils why they are to fund the remainder
- not to support second six pupils who are expected to pay for travel but only receive fees at a much later date, causing cash flow problems

Note that pupil's paid work should be distinguished from travel and expenses. Where chambers, in a pupil's second six, legitimately set off against the pupillage award, fees received by the pupil from his or her own practice, the amount set off should be the pupil's net profit after expenses, and not the gross fee.

## 4 Insurance

Pupils are covered by their pupil supervisor's Bar Mutual Indemnity Fund (BMIF) insurance, or their employer's insurance for work performed during pupillage. Once pupillage ceases however, they must apply immediately to the BMIF for their own cover for legal services offered in self-employed practice. If a pupil enters employed practice he/she should ensure that they are covered by the employer's insurance. Failure to take out insurance is a breach of the Code and will be referred to the Complaints Committee. Some Employers self insure which is acceptable.

## 5 Chambers Awards

If a pupil has an award, he/she needs to establish what the exact terms of the award are. The pupil supervisor should be able to provide all the relevant details including: how and when the award is to be paid, whether a minimum income is guaranteed in the practising six months, whether the pupil is expected to repay any of the award, and what happens if a pupil leaves before completing pupillage.

6 Inns Awards

The Inns tend to focus their funding on the CPE/Diploma in Law and the BVC/BPTC. However, there are still some awards available for the pupillage year. Further information is available from the Students' Officers at each of the Inns or from the Inns' websites.

7 VAT

Issues relating to accounting and VAT are covered as part of the Practice Management Course, to be undertaken by all pupils. It is recommended that all pupils register with HMRC for VAT.

The Bar Council produces a "Taxation and Retirement Benefits Handbook" which includes advice on income tax and VAT and a section of dedicated advice to pupils and barristers starting practice. The Handbook may be ordered via the Bar Council's website at a cost of £40: <http://www.barcouncil.org.uk/guidance/taxationandretirementbenefitshandbook4thedition/> Alternatively, it is reproduced in full in "The Bar Handbook 2009-10" published by Lexis Nexis. See <http://www.barcouncil.org.uk/memberservices/BarHandbook200910/>

See also <http://www.hmrc.gov.uk/VAT/index.htm>.

## 8 Standards and the Curriculum Framework

### 8.1 Overall Framework for Pupillage

It is required that the Pupillage stage of training must normally be of one calendar year's duration, 'satisfactorily' completed.

**BTR 27** A person ... completes the Professional Stage by: satisfactorily completing 12 months of pupillage and such further training as may be required by the Board

In addition, in order to maintain standards, the minimum level of competence must be demonstrated:

**BTR 3C** The Board shall publish from time to time a general statement of the minimum level of competence reasonably to be expected of a barrister when first qualified to practise

Paragraphs 276 – 280 of the Report of the Review of Pupillage (May 2010) focus on the issue of what is 'satisfactory' in pupillage, and what precisely level of competence should be attained in order to satisfy the BSB. The standard to be achieved and the criteria for assessment are therefore set out in this Chapter, together with the defined standards to be attained by pupils which are set out in Appendix H.

### 8.2 Generic Standards

"The standard of performance which a pupil's work must achieve is the standard at which the work (whether it is oral advocacy or written work of any description) professionally addresses all the points raised, and is capable of rendering a real and valuable service to the client."<sup>9</sup>

The Working Group took as its starting-point for discussion the new standards of assessment that have been put in place for the Bar Professional Training Course (BPTC) in response to the review of the BVC (and associated report, July 2008) which emphasised the professional as opposed to the academic approach of the course. The BPTC Handbook (for which see <http://www.barstandardsboard.org.uk/assets/documents/BPTC.pdf>) embodies this approach.

Competence is assessed not by reference to academic grades but it is measured according to its value to a prospective client. The specification in the BPTC Handbook (Part A, para. 2.1.5) for work considered to be "Outstanding" is that it must embody realistic professional advice or performance. By contrast candidates are judged to be "Not Competent" if they are not "capable of producing work on which a prospective client could rely".

In a professional environment the value and quality of work is always assessed according to its worth to the client. Since the thrust of the reforms to the BPTC was to cement the Vocational Stage with the Professional Stage (i.e. pupillage), the natural consequence is that the standards of assessment to be applied to the work of pupils should equally be client-oriented. Advice given in conference or in writing must be clear, accurate, comprehensible and constructive. It must address all the issues which the client faces. Where documents are submitted to court (statements of case, indictments, application notices of various kinds, witness statements, notices of appeal, skeleton arguments, written submissions) these must accurately and fairly represent the client's case, and also gain the respect of the court. Oral advocacy is of overriding importance, and must be measured against the client's interests and needs. The advocate must be able to present the best possible case for the client in an attractive, persuasive and clear manner. All the points in the case must be properly and professionally dealt with.

<sup>9</sup> Wood Review of Pupillage, Recommendation 54.

Training must be focussed on the core knowledge, skills and competencies as specified; they directly relate to the eligibility for a practising certificate. The detailed requirements aim to ensure that barristers provide professional service of the highest standard to their clients.

Appendix H sets out in detail the standards and competencies to be attained by pupils, that is, a definition of what is 'satisfactory completion of pupillage.' Pupils and supervisors should use the descriptors and details provided in Appendix H to determine the aspects of practice that have reached the required standards and those which need to be developed. Pupil supervisors must be satisfied that a pupil has met all descriptors as defined in order to be deemed to be performing at the required level in a particular area.

### 8.3 Standards for Advocacy

The required advocacy skills and competencies receive special attention in Appendix H and are defined separately, in accordance with ATC and other requirements.

Attention is also drawn to the Dutton criteria<sup>10</sup> and the website of the ATC. This should be consulted for criteria for advocacy training, best practice and common mistakes:  
<http://www.advocacytrainingcouncil.org/index.php>.

### 8.4 Roles and Responsibilities of Pupils

**BTR 36** During any period of pupillage the pupil must; (a) be diligent in receiving the instruction given; and (b) observe all legal and professional obligations of confidence.

The Code specifies:

**801** A barrister who is a pupil must: (a) comply with Part V of the Bar Training Regulations; (b) apply himself full time to his pupillage save that a pupil may with the permission of his pupil-supervisor or head of chambers take part time work which does not in their opinion materially interfere with his pupillage; (c) preserve the confidentiality of every client's affairs and accordingly paragraph 702 applies to him in the same way as it does to his pupil-supervisor and to every person whom he accompanies to Court or whose papers he sees.

**802** A barrister who is a pupil may supply legal services as a barrister and exercise a right of audience which he has by reason of being a barrister provided that (a) he has completed or been exempted from the non-practising six months of pupillage; and (b) he has the permission of his pupil-supervisor or head of chambers; provided that such a barrister may during the non-practising six months of pupillage with the permission of his pupil-supervisor or head of chambers accept a noting brief.

Pupils must therefore

- Act appropriately on feedback provided by the supervisor(s)
- Act appropriately to assessment and appraisal of his/her work
- Take steps to ensure that the outcomes of core and specialist areas are met and that competencies are attained to the required standard
- Undertake additional compulsory courses as required
- Complete any remedial/additional work as required

<sup>10</sup> Set out in Appendix M of this Handbook.

- Behave at all times in accordance with professional ethics and conduct
- Preserve the confidentiality of every client's affairs, including clients of the pupil supervisor and other barristers with whom they work
- Not attempt to exercise rights of audience during the non-practising period of pupillage. A noting brief may be undertaken.
- Prepare documentation to assist the supervisor in the completion of documentation for signing off after first six:
  - Ensure the initial registration of pupillage
  - Notify the BSB Standards & Quality Section of any material changes in pupillage arrangements (e.g. a change in pupil supervisor, a change in start or end dates of pupillage)
  - Ensure they have met the required standards/competencies and that outcomes have been met as defined in core and specialist units. The completion of checklists and work diaries are helpful in ensuring that the suggested range of core tasks are completed (especially for the non practising period of pupillage)
  - Make sure they have completed the pupillage advocacy course as part of the non-practising period of pupillage. If a pupil does not satisfactorily complete the pupillage advocacy course, he/she will not be issued with a provisional qualification certificate (and practising certificate) and so will not be eligible to commence the practising period of pupillage, until the course has been completed.
  - Make sure his/her pupil supervisor signs the certificate of satisfactory completion of the non-practising period of pupillage and submit it at once to the BSB
  - Register the practising period of pupillage (if he/she did not register the whole pupillage at the beginning of the non-practising period)
- Exercise rights of audience during the practising period of pupillage only with the permission of his/her pupil supervisor or Head of Chambers and having received notification from the BSB that they are eligible to do so.
- Prepare documentation to assist the supervisor in the completion of documentation for signing off after the second six:
  - Complete any additional checklist for the practising period of pupillage
  - Make sure his/her pupil supervisor signs the certificate of satisfactory completion of the practising period of pupillage and submit it at once to the BSB
  - On completion of pupillage, keep the Bar Council's Records Office and his/her Inn notified of current status (e.g. tenant, squatter, third six pupil, employed or not in practice) and contact details
  - Register as self employed (with the Tax Office) as soon as possible after commencing the second six pupillage [NB does not apply to the Employed Bar].
- Comply with any other rules or guidelines relating to pupillage issued by the Bar Standards Board



In addition, pupils are advised that they should:

- Be conscientious in receiving the instruction given and apply him/herself full time to the pupillage (save that, with the permission of the pupil supervisor they may take part time employment that, in the opinion of the supervisor, does not materially interfere with it).
- Make full use of the learning opportunities provided
- Be responsible for his/her own learning and keep records as appropriate
- Take out his/her own insurance with the BMIF if he/she will be offering legal services as a self-employed practitioner, or ensure that he/she is covered by the employer's insurance if they enter employed practice.

## 9 The Assessment Process

### 9.1 General principles

Pupils will benefit from:

- the drawing up of a formal work plan for each phase of pupillage, and
- being formally and systematically assessed at regular intervals (every 1-3 months) during their pupillage.

This will enable them to understand their progress and what difficulties, if any, they face in terms of successful completion of pupillage and tenancy selection.

Many ATOs already follow such a procedure, with formal work plans devised for pupils, followed by formal assessment at regular intervals. Whilst formal assessment and grading of pupils' work is not an absolute requirement, it is considered that some form of assessment is considered to have a useful function. It is suggested that all ATOs put such a procedure in place.

For information on the assessment of core areas see Chapter 10; for assessment of specialist areas, see section 10.5 and the specialist checklists available on the BSB website. For assessment of compulsory courses see Chapter 11 and additional information provided by the ATC.

### 9.2 Assessment and feedback

Although there is no formal specification for examinations or written or oral assessment, it is important that some forms of assessment take place. This can and often does take the form of written pieces of work being assessed by the supervisor and/or others, which is noted as good practice.

**'Assessment'** is defined in this context by the BSB as 'a structured measurement of the pupil's progress against standards'. Feedback should follow.

**'Feedback'** is defined as the regular comments on a pupil's work which the supervisor provides in order to improve performance against the standards and competencies. Feedback is also about reinforcing good practice and work as well as identifying areas for improvement.

Persons other than the supervisor may also participate in the evaluation of pupils' performance, for example, clerks, solicitors, members of the judiciary, clients etc. This should normally be categorised as 'feedback' rather than formal assessment – although it may ultimately have a bearing on the latter.

### 9.3 Monitoring progress during pupillage

Apart from formal assessment, monitoring and evaluation of progress during pupillage is an important element of the pupillage stage of training. Whilst it is mandatory that some form of monitoring of progress takes place, the nature of this is at the discretion of the ATO and supervisor(s). See Appendix G for identified good practice.

### 9.4 Appraisal

It is recommended that formal appraisal, in addition to regular feedback and informal monitoring of progress takes place during pupillage. Whilst it is regarded as good practice that some form of periodic appraisal takes place, the nature of this is at the discretion of the ATO and supervisor(s). See Appendix G for identified good practice.

### 9.5 Assessment of competence: checklists

In order to determine, at the end of the period of pupillage whether the competencies as defined have been met, the standards and competencies as defined in Appendix H should be carefully considered.

Checklists are to be used for the purpose of verifying that outcomes and competencies have been met. Pupil supervisors and others involved in formal supervision, the Pupillage Training Principal/Director of Training and Head of Chambers are all required to countersign checklists completed by pupils to demonstrate that they have covered all areas of training to the required standard. All pupils must ensure that a copy of their completed checklist is submitted to the BSB together with a certificate of satisfactory completion of the second six pupillage. The pupil supervisor is responsible for ensuring the correct paperwork is completed. Records of checklists of pupils must be retained by ATOs for a period of three years following completion. If any sections have not been signed off as completed, then an explanation must be provided.

### 9.6 Referrals and 'remedial work'

Where omissions and shortcomings are identified, then steps must be taken to overcome any deficiency. These should be identified as early as possible through feedback (and also by appraisal of pupils, see section 14.5) so that corrections can be made before the end of the period of training, rather than resulting in the problem of a supervisor feeling unable to sign off pupillage as having been satisfactorily completed to the required standard. Each checklist should identify any major omissions and note what action the pupil proposes to take in order to remedy them. The adequacy of the steps being taken depends to some extent on which part of the checklist the pupil has been unable to complete and for what reason (e.g. time constraints, inability to meet the required standards etc).

### 9.7 Failure and reassessment or repeat of pupillage

Where it is not considered that the defined standards and competencies have been met (as specified in Appendix H), then the pupil supervisor must not sign off the pupil as having completed either the first six or second six (as appropriate). Discussion must take place so that the pupil is aware of precisely what shortcomings are evident and how these might be rectified. The Head of Chambers and Director of Pupil Training (or Pupillage Training Principal) must be kept informed. The BSB must also be kept informed, specifically at the point of signing off a pupil, or if there are issues related to failure of a compulsory course (general problems in performance should not all be notified).

It is expected that, with systems of feedback, monitoring of progress and formal appraisal meetings, issues will be identified and corrected before the six month periods are completed. Where a pupil is not signed off by his/her supervisor, opportunities may be provided for additional or remedial work in order to enable the pupil to attain the required level of competency, but there is no obligation for this to be provided by chambers or by any other ATO.

**Note:** Cheating and plagiarism at the pupillage stage of training are rare but sadly not unknown. Pupils should be aware that any form of plagiarism or cheating on the compulsory courses or in exercises required by an ATO (for example, the reuse or plagiarism of another current or previous pupil's written work - e.g. skeleton arguments - submitted for an exercise) will be treated extremely seriously indeed. This will be reported to the pupil's Inn and may be a reason (or contributory reason) for disciplinary action and/or termination of pupillage.

### 9.8 Appeals against assessment decisions

For appeals, in the event of a pupil not being signed off by his/her supervisor as having satisfactorily completed the pupillage stage of training, see 12.5.

## 10 Core and Specialist Knowledge and Skills

### *Overview*

The BSB requires all pupils to achieve specified standards and competencies, as defined in Appendix H, relating to the following four core skills:

- Conduct and etiquette
- Advocacy
- Conferences and Negotiations
- Drafting, paperwork and Legal Research

The core skills are summarised in sections 10.1 – 10.4 below. A note on specialist areas is provided in 10.5. The standards to be attained by pupils are defined in Appendix H. Checklists of tasks that should normally be completed for each core area are provided in Appendix I which should be read in conjunction with Appendix H on the standards to which such tasks should be completed.

### *Use of the defined standards and Pupillage Checklists*

The primary purpose of the checklist is to provide guidance to pupils and pupil supervisors about the range of tasks that are normally expected to be covered and/or completed during the pupillage stage of training. The levels to which such tasks are to be completed are defined in Chapter 8 and Appendix H where the descriptors of the standards and competencies to be attained by pupils are defined.

Copies of completed checklists must be submitted to the BSB on completion of the second six months' pupillage together with the Certificate of Satisfactory Completion. A full Qualification Certificate confirming completion of pupillage will not be issued until this has been satisfactorily completed and received. Pupils and ATOs should keep copies of the checklist and certificate of satisfactory completion for a period of at least three years. Completed checklists may form the basis of the monitoring process. Checklists 1-4 are for use with the four core skills.

In addition, a further specialist checklist must be submitted reflecting the area of work in which the pupil has been trained, as prepared by the relevant specialist Bar Association or by the ATO itself (examples of 'bespoke' checklists are available from the BSB). Alternatively, ATOs and supervisors may also produce their own checklists specific to those pupillages that they offer/supervise. These must relate to the common core and be submitted to the Bar Standards Board for approval before being put into use. Significant changes to existing checklists should also be submitted to the BSB for approval.

The various sections of the core and specialist checklists should not be regarded as mutually exclusive. For example, drafting skills may be covered with reference to the core checklists, as well as by means of a specialist checklist as applicable to a particular speciality. Further, some points mentioned in the checklists may be applicable only to criminal sets. Cross references may be made. The approval process is likely to take at least one month. On completion of the pupillage, the completed checklists should be sent to the BSB.

### **10.1 Conduct and etiquette**

This aims to ensure that pupils have a thorough understanding and appreciation of the operation in practice of rules of conduct and etiquette at the Bar and achieve a working knowledge and understanding of the Code of Conduct and the written standards for the conduct of professional work.

See Appendix H for standards to be met and refer to the checklists (in Appendix I) for details of the tasks, knowledge and understanding that pupils are expected to have acquired before completing pupillage.

The Code of Conduct must be considered as required reading in its entirety, and the learning in this section will be largely 'pupil-centred'. However, in respect of many of the matters relating to conduct and etiquette, at least one formal session/discussion between pupil and pupil supervisor will be helpful and is strongly recommended. Whenever a point of conduct or etiquette arises in practice, the opportunity should be taken to consider the point with the pupil. In order to confirm appropriate coverage in the Work Plan, pupils and supervisors should refer to the relevant core checklist. The pupil must maintain a record of relevant work done/issues considered, demonstrating how requirements have been met, with reference to the relevant checklist. Formal assessment will not be expected but a formal discussion session should take place at the end of each six months. Written feedback should be provided if appropriate. The pupil supervisor should initial and date the last column of the relevant checklist of work done, when it is considered that the topic has been adequately covered, and to a satisfactory level of competence, having regard to the objective set out above. The 'Conduct and Etiquette checklist' (as in Appendix I) should be used as a tool, in order to ensure that core knowledge and skills are covered, to the standards defined in Appendix H ('Standards to be attained by pupils').

## 10.2 Advocacy

This aims to enable the pupil to develop and practise the skills necessary to be an effective advocate in oral or written advocacy

This will be largely pupil-centred. Much will necessarily depend on observation by the pupil but a pupil supervisor will discuss both the basic techniques of oral advocacy and any specific points that might arise in a particular case in order that a pupil may observe intelligently. In-house advocacy exercises should be included. During the first six months, the pupil will be expected to read and become familiar with the supervisor's current cases and be in a position to discuss in detail the relevant issues and how they might be approached during the trial. It is essential that pupils are involved in all matters during the preparation of the trial, particularly drafting and considering court papers, the making of appropriate applications, advising on evidence, advising on sentence in criminal cases and advising on appeal. All such documents prepared should be filed in the pupil's file both as a useful precedent and to assist in the assessment process. Pupil supervisors are encouraged to arrange for pupils to attend as wide a range of courts and tribunals as possible (if necessary with other members of chambers) having regard to the type of work that the pupil is likely to take on in the early years of practice.

During the second six months, if a pupil is doing his or her own work, a pupil supervisor should exercise supervision over the pupil's preparation and take time subsequently to review how the matter has gone. It is desirable for the pupil supervisor to either themselves watch the pupil on their feet in court on a regular basis or (if that is not possible) to ask other members of chambers who are in a position to observe the pupil at court and to discuss the pupil's performance with the supervisor and if necessary with the pupil.

A pupil must also attend the advocacy course provided by his or her Inn or Circuit in the first six months. These courses provide the opportunity for pupils to practise oral advocacy under instruction. They can only be effective if pupils have prepared adequately and pupil supervisors are asked to ensure that pupils take the need to prepare very seriously and that they are given sufficient time to do so. Many chambers run their own advocacy courses in addition to those provided by the Inns. The same considerations should apply to the pupil's participation in those courses.

The pupil must maintain a record of relevant work done/issues considered, demonstrating where the outcomes detailed above have been met. Cross-reference should be made to the

relevant checklist. Formal, graded, assessment by the supervisor will not be expected in this area, but the pupil will be formally assessed by means of the Compulsory Advocacy course to be undertaken through his/her Inn of Court (see Chapter 11). A formal discussion session should take place at the end of each six months. Written feedback should be provided as appropriate. The pupil supervisor should initial and date the last column of the relevant checklist of work done, when it is considered that the topic has been adequately covered, and to a satisfactory level of competence. For the definition of 'satisfactory' see the standards and competences as specified in Appendix H. The 'Advocacy Checklist' (as in Appendix I) should be used as a tool, in order to ensure that core knowledge and skills are covered, to the standards defined in Appendix H ('Standards to be attained by pupils').

### 10.3 Conferences and Negotiations

This aims to develop the skills of pupils in the area of conference and negotiation, so that pupil may be raised to a standard where he or she can competently conduct a conference or negotiation on behalf of a client.

This will be largely student-centred but pupils must be supervised closely as they develop conference and negotiation skills. Necessarily, this will largely be by observation and discussion with the pupil supervisor but pupil supervisors should not overlook the importance of instructing the pupil in respect of preparation for conferences and negotiations and the making and retaining of a full and accurate note of all conferences. Pupils must be as actively involved as possible.

The pupil must maintain a record of relevant work done/issues considered, demonstrating where the outcomes have been met. Formal assessment of written work may not be expected in this area but oral and written feedback must be provided. A formal discussion session should take place at the end of each six months. Cross-reference should be made to the relevant checklist and the pupil supervisor should initial and date the last column of the relevant checklist of work done, when it is considered that the topic has been adequately covered, and to a satisfactory level of competence, having regard to the objectives as set out. For the definition of 'satisfactory' see the standards and competences as specified in Appendix H.

### 10.4 Drafting, Paperwork and Legal Research

This aims to enable pupils to develop the necessary writing and drafting skills by producing and obtaining feedback on written examples of work.

At the same time, legal research skills, developed from those in place on the Bar Course, will be enhanced, in order to ensure that pupils can correctly apply all sources of information.

It is of the greatest importance that pupils practise and develop the necessary skills by producing practical work and receiving constructive feedback on that work by their pupil supervisor. Simply observing the work of their pupil supervisor is not enough. Feedback on a pupil's work should be given as soon as possible by a pupil supervisor whilst the work is still fresh in the mind of the pupil. By the conclusion of pupillage a pupil should have demonstrated the appropriate degree of competence in each of the relevant skills/all areas of written work. The development of research skills will be largely pupil-centred, but it is important that help and direction is provided by the supervisor as appropriate. A pupil should be assisted as necessary to learn how to locate and employ all relevant sources of information.

It is of the greatest importance that research skills are practised and developed and that feedback is provided. Written work that is produced must be submitted for assessment and

written feedback should be provided by the supervisor. An actual grade may or may not be provided. Assessment of writing and research skills may take place in the form of assessment of written pieces of work where elements of research will be evaluated as an integral part. It is important for supervisors to convey to pupils an idea of where they are without being too discouraging in the early stages. The pupil must maintain a record of relevant work done/issues considered, demonstrating where the outcomes detailed above have been met. Cross-reference should be made to the relevant checklist (see Appendix I). The pupil supervisor should initial and date the last column of the relevant checklist of work done, when it is considered that the topic has been adequately covered, and to a satisfactory level of competence, having regard to the objective set out above. For the definition of 'satisfactory' see the standards and competences as specified in Appendix H.

### 10.5 Optional and Specialist Knowledge and Skills

All core areas must be covered by all pupils (although clearly some specific items in the core checklist are relevant only to criminal or civil work, as the case may be). In addition, a considerable proportion of time and effort will be spent on specialist areas. Pupil supervisors must accordingly provide their pupils with a fifth, specialist, checklist, either from those available as listed below, or 'bespoke' (subject to approval by the BSB).

Training in specialist areas will clearly vary according to the set or employed position/department. The actual time spent on specialist areas should remain flexible. Whilst some pupils prefer to specialise at an early stage, others may prefer to widen their experience in different areas. Some variation or rotation between supervisors, even for short periods is recommended. It is also recommended as good practice for those with pupillages in the Employed Bar to spend some time in chambers if this can be arranged.

Specifications for checklists and indicative content, material and standards to be covered in specialist areas are not (at present) included in this Handbook but provided (at <http://www.barstandardsboard.org.uk/Educationandtraining/whatispupillage/pupillagechecklists/checklistsdownload/>) separately - to enable Specialist Bar Associations and others to update them separately and periodically as appropriate. Checklists are designed to help pupils meet their obligations under the Code and the BTRs. Items marked with an asterisk are those which the SBAs consider essential to cover during pupillage. Outcomes must have been met but it is not essential for the pupil to have covered every item on the checklist of tasks (a good range should have been covered).

There are checklists currently available for the following specialist areas:

- Administrative Law
- Chancery Law and Practice
- Commercial and Admiralty Law
- CPS
- Criminal Law
- Employment Law
- Family Law
- General Common Law
- Immigration Law
- Local Government and Planning law
- Personal Injury Law
- Revenue Law
- Technology and Construction Law

If none of the specialist checklists is appropriate, ATOs or supervisors must draw up their own specification to take into account the nature of their work and the type of pupillage that is provided. These must be approved by the BSB (on an individual basis, in advance). Where the work of a pupil supervisor is highly specialised, consideration should be given to broadening the experience of the pupil, for example by secondment to others with a more general practice or marshalling. Additional supervisors must be approved if the pupil is attached for one month or more. If an ATO is unable to provide training for any essential elements set out in the checklist(s), then steps must be taken to ensure that these elements will otherwise be covered. There may be overlap between the core and specialist checklists so completion of checklists may rely on cross-referencing to save duplication of effort.

## 11 Compulsory Courses

### Overview

In accordance with BTR 33 the BSB specifies that during pupillage all pupils must attend certain compulsory courses to build on training received at the BVC/BPTC stage.

**BTR 33** Any period of pupillage must provide training which is adequate and which complies with such criteria as may be published by the Board

The compulsory courses supplement training received in an ATO or from supervisors:

- the Pupillage Advocacy Training course
- the Practice Management Course

These courses are provided by the Inns and Circuits who provide details on how and when the courses are run. Pupils normally attend the courses of their own Inn or Circuit, although they may be allowed to attend those of another Inn or Circuit by special arrangement. Pupils are not entitled to obtain a full qualification certificate or commence practice until, following formal assessment, they have satisfactorily completed the compulsory pupillage courses. The pupillage advocacy course must be completed as part of the non-practising period of pupillage. A pupil who has not yet satisfactorily completed the pupillage advocacy course will not normally be issued with a provisional qualification certificate and so will not be eligible to commence the practising period of pupillage until the course has been completed.

Pupils must also undertake the Practice Management Course, and they are strongly advised to do so during the non-practising period during pupillage. A pupil who has not yet satisfactorily completed the Practice Management course may not be issued with a full qualification certificate and so will not be eligible to commence practice as a barrister until the course has been completed.

### 11.1 Advocacy Course

#### 1 Inns and Circuits

Formal advocacy courses that pupils must undertake are provided by the Inns and Circuits. These are additional to the advocacy training and practice that generally occurs during pupillage. Details of advocacy courses (location, date and availability etc) can be obtained from the relevant Inn and/or Circuit. Courses consist of a minimum of 12 hours advocacy training, in the following four compulsory elements (based on the Dutton criteria, Appendix M):

- Skeleton arguments
- Oral submissions
- Examination-in-chief
- Cross-examination

#### 2 Preparation

Pupils must be afforded adequate time to prepare for compulsory advocacy training. Given that pupils are required to undertake and successfully complete this training in order to acquire a provisional qualification certificate, preparation is obviously an important issue. Concerns have been expressed in the past by the Advocacy Training Council that there is an on-going issue of uneven preparation time for pupils. Pupils sometimes arrive at courses unprepared, having been given no time off by their pupil supervisor in advance of the course. Pupils' advocacy performance is formally assessed, so it is critical that adequate time for preparation is allowed. As far as possible, all pupils should start from a common starting point and be given an equal chance of satisfactorily completing the advocacy training requirement laid down by the Board. The ATC has recommended that pupils are given (at least) a day off in



advance of a compulsory and assessed advocacy training assessment to allow them to prepare. The BSB supports this approach and attention of both Pupil Supervisors and Heads of Chambers is therefore drawn to this requirement.

### 3 Assessment on compulsory courses

The compulsory advocacy course provides the compulsory assessment component of pupillage. When undertaking Advocacy Training, pupils are formally assessed during each training providers' advocacy training programme, according to set criteria (based on the concept of work being worthy of providing a service to a client). Criteria are published on the ATC website at: <http://www.advocacytrainingcouncil.org/>.

### 4 Assessment and reassessment (on compulsory courses)

Most candidates will be assessed as satisfactory but further stages follow if a pupil does not meet the required standard:

**Stage 1** A candidate who has been assessed as having met the required standard is confirmed as having passed by the relevant Inn/Circuit. The Inn/Circuit will complete the candidate's Advocacy Certificate and inform the Education Standards Department of the BSB that the pupil has satisfactorily completed the compulsory advocacy training.

**Stage 2** A candidate who has not met the required standard will be referred and re-assessed by the Inn/Circuit after additional training. When the candidate is confirmed as having met the required standard, the Inn / Circuit will complete the candidate's Advocacy Certificate and inform the Education Standards Department of the BSB that he/she has satisfactorily completed the compulsory advocacy training.

**Stage 3** Where, after Stage 2, the candidate still has not met the required standard for the Inn/Circuit to be awarded his/her Advocacy Certificate, then he/she will be referred to the BSB, as the Regulatory Body, for further assessment as to whether the required standard has been met.

Pupils who have not prepared appropriately or who do not commit themselves to participating in the exercises will be regarded as not having attended and will be expected to complete the course again. Where a pupil's performance is particularly weak in any aspect of their advocacy the pupil supervisor may be informed of the problems with the pupil's performance. The pupil supervisor should encourage the pupil to retake the course, where possible, and should identify where extra support is needed. A pupil's improvement in those areas identified as being weak on the course should be taken into account when considering whether to sign the pupil's certification form. Performance on the advocacy course is however only one factor that should be added to a view taken over the six months of pupillage.

## 11.2 Practice Management Course

The Practice Management Course (formerly known as the 'Advice to Counsel' course) is run by the Inns, and the Circuits, from whom further details may be obtained. The Practice Management Courses thus vary slightly but the following core elements should ideally be covered by all providers:

- Ethics
- Equality and diversity
- Work of the Bar Council and the BSB
- Circuits and messes
- Complaints and professional discipline
- Professional finances (tax, VAT, pensions, record-keeping etc)
- Professional indemnity insurance and common sources of claims
- Services available to the Bar
- Chambers' organisation
- Barristers and their clerks

- Barristers and instructing solicitors
- Barristers and lay clients
- Court etiquette and dress
- Money laundering legislation
- Data protection
- Registration and certification of pupillage
- The role of pupil supervisors
- Checklists for pupils
- Pupils' expenses and how to claim them
- Practice management and marketing
- The employed Bar
- The "third six"
- The FRU
- CPD and the SBAs

**Note:** More detail on the above outline will be provided in due course, in discussion with the Inns and Circuits.

### **11.3 Delivery of compulsory courses**

Practice may vary as to how and when the courses are delivered, for example during the working week, or split over a number of evenings and/or a residential or non-residential weekend. Elements (e.g. Advocacy and Practice Management) may be combined. The Advocacy Course is delivered by experienced practitioners and sitting and retired judges. The Practice Management Courses are delivered by a mixture of practitioners, barristers' clerks and chambers' managers, accountants and financial advisers, solicitors, and officers of the Bar Council, the BSB and the Bar Mutual Indemnity Fund.

### **11.4 Forensic Accounting**

The Forensic Accounting Course can be undertaken during pupillage or in the first three years of practice. The course is divided into three areas of practice, namely Civil, Crime and Family. Barristers must decide which programme they should attend. Day 1 covers Finance and Accounting principles and is of relevance to all delegates. Day 2 covers an overview of Forensic Accounting in the morning (which is relevant to all three programmes) and case studies in the afternoon which are relevant to one of the three areas of law. There is also a pre-course e-learning module. The two-day course provides delegates with practical guidance in the use of financial information and accounts (both corporate and individual). The course qualifies for 20 hours and is currently provided by BPP Professional Education on a fixed term basis. See <http://www.bppprofessionaldevelopment.com/forensicbar/> for further information. This course is being reconsidered as part of the ongoing review of CPD.

### **11.5 Additional internal training**

Some Chambers and other ATOs (e.g. GLS, CPS) may provide additional training for their pupils. This may be made compulsory for pupils training in these organisations, but the provision of supplementary in house training courses is not required by the BSB, as long as the standards and competencies of pupillage can otherwise be met.

### **11.6 Plagiarism and cheating**

Cheating (including plagiarism) is extremely rare in the pupillage stage of training. However, pupils should be aware that any form of cheating on the compulsory courses (e.g. plagiarism of the work of a current or former pupil) will be treated extremely seriously indeed. It may be, or may be linked to, grounds for termination of pupillage.

## 12 Certification and Practice

### 12.1 Accepting instructions

**BTR 49** On completion of the non-practising period of pupillage, the Board will issue the pupil with a Provisional Qualification Certificate provided that the pupil has been called to the Bar under Part IX of these Regulations

Pupils may do a noting brief in the first six months, provided that he or she has the permission of their pupil supervisor or (*in absentia*) the Head of Chambers. Pupils may be paid for doing a noting brief during this period.

**BTR 50** On completion of the practising period of pupillage, the Board will issue the pupil with a Full Qualification Certificate if the pupil has a Provisional Qualification Certificate and the Board is satisfied: that the pupil has satisfactorily completed the practising period of pupillage and any further training required under Regulation 27(a); and that the pupillage is registered and complied with these Regulations.

Note: This has now been updated in accordance with the Legal Services Act 2007. From January 2010 it has been a criminal offence to practise as a barrister without a practising certificate (in accordance with the Legal Services Act 2007). Therefore practising pupils are now issued with practising certificates. See above, section 2.1.

### 12.2 Insurance

Unless alternative arrangements have (exceptionally) been made, pupils are covered by their pupil supervisor's insurance until they receive a full qualification certificate. Barristers offering legal services in self-employed practice must take out their own insurance with the Bar Mutual Indemnity. Employed barristers should ensure that their employer has any appropriate professional indemnity insurance for themselves and to also cover pupils. Central government, for example, does not have specific insurance because it bears its own risk.

### 12.3 Certification of Pupillage: first six

At the end of the first six months, a pupil who has satisfactorily completed this phase of training (that is, has met the outcomes and demonstrated the competencies specified for the first six months) will be signed off by his/her supervisor (and others as appropriate) as having successfully completed the first six to the standards described in Chapter 8 (and Appendix H). On completion of their first six pupillage, pupils have to submit a duly completed Certificate of Satisfactory Completion of Pupillage form to the BSB (see Appendix J).

The process of signing off also entails the completion of the relevant checklists for compulsory and specialist areas as appropriate (as described in Chapter 10). It is the responsibility of the pupil to self certify completion of the different sections, but the onus lies with the supervisor-assessor to confirm that training has been completed to the required standard. Once satisfactory completion of the first six is confirmed and has been submitted to the Standards & Quality Section of the BSB, then a Provisional Qualification Certificate will be issued and, providing the pupil has a practising period of pupillage, the pupil will be eligible for a practising certificate.

### 12.4 Certification of Pupillage: second six

At the end of the second six months, a pupil who has satisfactorily completed this stage of training and has met the outcomes and demonstrated the competencies specified for the second six months will be signed off by his/her supervisor (and others as appropriate, see Certificate of Completion, Appendix J) as having successfully completed the second six to the standards as defined. On completion of their second six pupillage, pupils have to submit another Certificate of Satisfactory Completion of Pupillage to the BSB, together with a copy of

the completed checklists. It is up to the pupil to self certify completion of the different sections, but the supervisor-assessor must confirm that standards have been met. The pupil supervisor (and others as appropriate) should sign the certificate of completion of the second six. On the basis of satisfactory completion of the second six pupillage, pupils are issued with a Full Qualification Certificate, after which a full Practising Certificate can be obtained from the Bar Council where appropriate.

**Note:** A Full Qualification Certificate is not a practising certificate. It only certifies completion of pupillage. A Provisional Qualification Certificate only certifies completion of the first six. These certificates have no practising rights attached to them. The full qualification certificate is the one-off certificate issued to show that someone has completed all the qualification requirements, in pupillage. A Practising Certificate is an annual certificate that shows that a barrister is authorised to practise in a particular year. The fact that a barrister has completed pupillage and been issued with a Full Qualification Certificate, does not necessarily mean that he/she will be entitled to a practising certificate. For the requirements for holding a practising certificate see the Bar Council website :

<http://www.barcouncil.org.uk/about/2010PractisingCertificateFeefortheSelfEmployedBar/>

## 12.5 Pupil supervisors' Obligations in Signing off Pupillage

1 Every pupil supervisor must be aware of the obligation, at the end of each period of pupillage, to provide a certificate of completion of pupillage so the BSB can issue a Provisional or Full Qualification Certificate complying with BTR 49 and 50. If a pupil supervisor fails to certify a pupil where it is proper to do so (i.e. if the pupil has completed his or her pupillage satisfactorily) it is a breach of the guidelines set out in the Code of Conduct. On the other hand, it is also a breach of the Code if a supervisor fails to take his/her role seriously and inappropriately signs off a pupil. Pupil supervisors must not certify a pupil who fails to reach the required standards.

2 If the pupil supervisor is unavailable to sign a certificate for completion of the first six, then the Head of Chambers or the Pupillage Training Principal/ Director of Pupil Training may sign the certificate - provided that he or she provides reasons why the pupil supervisor was unable to sign the certificate, and is him or herself satisfied that requirements and outcomes have been met. The certificate for completion of the second six must be signed by at least two people if the pupil supervisor is unavailable i.e. by both the Head of Chambers and the Pupillage Training Principal/ Director of Pupil Training or another supervisor.

## 12.6 Appeals against non Certification

1 Where a Certificate of completion is not provided for any reason then an appeal may be made to the BSB:

**BTR 55** If the Board refuses to issue a Provisional Qualification Certificate or a Full Qualification Certificate, the pupil may request a review of the decision under Part X of these Regulations, provided that the request is made in writing to the Board within one month of the date when notice of the decision was given.

2 Mindful of their duties and responsibilities not to sign off a pupil if he/she fails to meet the required standards, the pupil supervisor may decline to sign the certificate on the grounds that he/she is not satisfied that the pupillage has been satisfactorily completed. An appeal may be made against such a decision. Details are available from the BSB. The decision of the Qualifications Committee will be final. However, it may be possible to negotiate a remedial programme with the ATO in order to enable a pupil to meet the required level. There is no obligation on the ATO to do this.

**Note:** This situation may develop into a complaint, either by the pupil against the ATO or by the ATO against the pupil, where there is reason to consider that there has been an infringement of the Code of Conduct.

## 13 Resources

### 13.1 Resource requirements

Details of resources that must be provided by ATOs are specified in Appendix F (standards for ATOs).

### 13.2 Good practice

In addition to mandatory requirements, the provision of the following for pupils is regarded as good practice: (see Appendix F):

- Own workspace, dedicated PC or laptop, own phone extension, email address and facilities
- Access to chambers or an Institutional Library, including access to Law reports etc. Rules relating to the use of the library, LEXIS, the Internet and so on must be clear to pupils who should follow them scrupulously
- Pupils are also entitled to use the Inns' libraries of which they are a member
- Access to facilities on Circuits may also be provided
- Office Space - Pupils should usually share a room with their Pupil Supervisor so that they can benefit from observing their routine and professional practice.
- Secretarial services, computing facilities, photocopying, post, telephone - The extent of provision may vary but the ATO must meet the requirements for ATOs. There should be procedures in existence regarding the use of secretarial services, computing facilities and the photocopier and whether pupils need to ask permission to use them or keep any records of their use.

Arrangements for private use of the above should be made clear to pupils. Arrangements for making or receiving private telephone calls, or sending or receiving letters or emails, or using the internet through the premises should be agreed in advance.

## 14 Support and Advice for Pupils

### 14.1 General issues

The mandatory requirements for pupillage provision are enhanced by good practice. This is summarised in this section, presented in the form of 'support and advice' for pupils. It is important that pupils obtain as much information as possible (and at an early stage) about what is expected of them. They should be provided with a full copy of the chambers' or organisation's pupillage policy document or equivalent documentation.

**Matters itemised below are to be regarded as obligatory where the word *must* is used (highlighted in bold) and as good practice where *should* is used instead.**

### 14.2 Induction

A comprehensive induction session should be provided, of about 1-2 hours' duration. The following points should be covered in induction (i.e. on the first day or during the first week), as good practice, but many will require continuing discussion as well:

#### *General*

- **Time must be taken by the supervisor to hold discussion with the pupil about the supervisor's and organisation's practice and the pupillage generally.**
- **The pupil supervisor must ensure that the pupil is provided with, and retains, the appropriate Handbook, checklists and policy documents**
- **There must be an opportunity to discuss what is expected of the pupil during pupillage**
- **Time must be taken to talk the pupil through this Handbook – especially the aims and objectives of pupillage, the roles and responsibilities of supervisors, and the roles and responsibilities of pupils**

#### *People*

- **The pupil must be introduced to the Head of Chambers, and other members of chambers as appropriate - or equivalents in the Employed Bar.**
- **Arrangements for rotation to other supervisors must be clear (if applicable)**
- **Procedures for taking on work for members of the ATO other than the pupil's designated supervisor must be clear**
- **The pupil must be introduced to clerks, secretarial staff and other persons within the organisation associated with pupillage**
- Pupils should be provided with an outline of the executive structure of chambers/the organisation, including relevant roles/responsibilities, e.g. the pupillage committee
- Forms of address to be used (formally and informally) should be made clear.
- Pupils should be informed of the role of other individuals in their pupillage training
- Pupils should be made aware if and when other pupils are to start pupillages
- The pupil should be provided with a mentor (at a similar level)

#### *General behaviour etc*

- Pupils should be informed about etiquette (towards members, clerks, staff, solicitors, court staff and clients, or Head of Department, colleagues etc at the Employed Bar)

- Pupils should be informed about dress conventions in the ATO. (Pupils will usually be expected to wear dark clothing appropriate for attendance at court, even if they will not be attending court on a particular day.)

### **Work**

- **The importance of confidentiality must be stressed**
- **Timing for feedback and formal appraisal must be clear from the outset**
- **Procedures and conduct in conferences (e.g. preparation, participation and follow up) must be clear**
- **Procedure and conduct for court appearance must be clear**
- **Pupils must be encouraged to ask questions**
- **Pupils must be informed about presentation requirements for paperwork**
- It is important for the pupil to know about the nature of work dealt with by the pupil supervisor and the type of work in which they will be involved
- Pupils should be informed about how their work will be planned, monitored and how feedback will be provided
- Pupils should be informed how competencies are to be demonstrated as met
- Pupils should be informed of the means for frank and early discussion when things go wrong/need improvement or when an actual mistake is made
- Pupils should be informed about procedure for taking work home (if applicable)
- Pupils should be informed at induction that their work will be seen by members of the organisation in addition to the supervisor
- Work distribution amongst pupils should be explained (and monitored to ensure fairness), in relation to chambers' policies on work distribution

### **Additional Educational opportunities and requirements**

- **Procedures for attending compulsory courses must be clear**
- **In house training by the chambers/organisation must be explained (if provided)**
- Procedures for undertaking FRU, pro bono or voluntary work should be explained
- Opportunities for non-compulsory lectures and courses should be identified

### **HR and Financial matters etc**

- **Expected working hours must be made clear**
- **The mechanisms for payment of pupillage awards must be clear. These should be paid on time**
- **The handling of remuneration for work done (additional to pupillage award) must be made clear. This should be paid promptly or other 'cash flow' arrangements made**
- **Expenses and incidentals to be borne by the ATO (e.g. course costs, travel, photocopying, stationery) must be made clear. It should be ensured that incidentals expenses met by members of chambers are met promptly**
- **Clerks' fees and payment must be clarified**
- Arrangements for the pupil when the supervisor is working from home should be made clear
- Arrangements for sick leave should be made clear
- Holiday entitlement should be explained, and the procedure for booking this
- Compliance with professional indemnity insurance requirements should be checked, insofar as they affect the pupil

### **Working environment (see also 14.8)**

- Pupils should be informed of the geography/layout of the building(s)

- Pupils should be informed about seating arrangements and places for cases/personal effects
- Pupils should be informed of security issues, such as the procedure on daily arrival and departure from the premises (e.g. via clerks' room; checking diary entries etc)
- Pupils should be fully briefed about health and safety issues, or related rules (e.g. smoking)

***Use of equipment (professional and private)***

- **It must be made clear how telephone and email facilities are to be used (professional or private)**
- **The availability of secretarial support must be made clear**
- Availability of other administrative assistance e.g. from Clerks and staff should be made clear
- Information should be provided on use of photocopiers, and printing facilities
- Information should be provided on availability of computing/network facilities
- Availability/access to books, electronic sources and borrowing facilities should be clear

***Policies***

- **The pupil must be informed of the Equality & Diversity policy (including policies on selection and recruitment to tenancy/permanent positions)**
- **It must be ensured that promised timing and method for appraisal and for decision about second/third six months pupillage and tenancy are met, or any unavoidable delays explained**
- **Attention must be drawn to the Code of Conduct, and steps taken to ensure the pupil has read it and discussed any points arising**
- **The pupil must be informed of the complaints and grievance procedures, as well as the BSB complaints system. Although it is preferable for issues to be resolved internally, with advice and support, pupils should be made aware at an early stage of the possibility of complaining to the BSB**
- Discussion of professional ethics should take place and be encouraged

***Other activities***

- Pupils should be provided with opportunities to meet and mix with colleagues socially
- The desirability of membership of the Circuit and SBAs should be discussed
- Active participation in the pupil's Inn's activities should be encouraged

***Appraisal for tenancy/permanent position***

- **The timing and mechanics for tenancy/permanent position interviews must be made clear**
- **The timing and method for decisions on second/third six and tenancy must be explained, and how decisions will be communicated**
- Information about careers and help available to secure further pupillage or employment may be indicated

**14.3 General obligations and functions in supervision**

The formal roles and responsibilities of pupils, supervisors and ATOs are specified in Chapters 4, 8 and 9.

**Note** – Completely non-educational tasks should of course be banned. Inordinate requests by supervisors or other members of chambers to pupils to do routine work (e.g. excessive photocopying, coffee making etc, or running shopping errands and so on) are inappropriate.



## 14.4 Court and other work

### 1 Court work: Non-practising Pupils

Pupils are not permitted to supply legal services as a barrister or exercise rights of audience as a barrister during the first six except that they may, with the permission of the pupil-supervisor or Head of Chambers, accept a noting brief.

Pupils should expect to see as much of their supervisor's court work as possible. If his or her practice involves extensive travelling on Circuit, pupils should try to establish early on whether or not they are expected to attend such cases and whether they will be offered any additional funds to cover the expenses. On days when a pupil supervisor is working some distance away, he or she may arrange for the pupil to accompany another member of chambers or leave them to do paperwork in chambers.

Chambers vary in the extent to which pupils are encouraged to attend court with other members of chambers, but it is particularly important that pupils see court work done by junior members of chambers in order to prepare them for court appearances in the practising six months. Pupils should consult with their pupil supervisor about the opportunities that are available for seeing such work.

Pupils will gain most benefit from observing court work if they are able to read the papers and discuss them before or after the court appearance, and it is always useful to prepare a skeleton submission or draft questions that should be asked. If a pupil attends court with his/her pupil supervisor, they should not offer an opinion regarding the case to the client. Any views should be discussed with the pupil supervisor alone.

### 2 Court work: Practising Pupils

Pupils are entitled to supply legal services as a barrister and exercise a right of audience as a barrister provided that they have completed (or been exempted from) the non-practising six months of pupillage and they have the permission of their pupil supervisor or Head of Chambers.

Pupils must carefully check the location of the court and arrive at least 30 minutes before their case is due to be heard. Pupils should check any details about which they are unsure with the pupil supervisor (for example, whether or not they need to be robed for a hearing, or the correct form of address for a particular tribunal). Pupils should also ensure that they are familiar with the established procedures in their chambers/organisation for the issuing and handling of briefs. They will usually be expected to contact clerks at the end of the case in order to be informed whether they are needed elsewhere. Pupils will also need to keep the instructing solicitor informed of the progress of the case.

Although pupils will be doing work of their own during the practising six months, this is still part of pupillage training. Before doing a case of their own, pupils should consult with their pupil supervisor, who can be expected to provide advice and guidance. When not undertaking their own work, pupils will be expected to attend court or conferences with their pupil supervisor and continue to assist with their paperwork as part of training.

In relation to court appearances, the pupil supervisor should provide assistance before a pupil goes into court and also provide an opportunity for discussion afterwards. Ideally, the supervisor should observe the pupil's performance in court on at least one occasion, or observe the pupil undertaking a minor task in one of his or her own cases, for example, taking a small point in a conference, speaking to a solicitor on the telephone or making a small uncontested application such as costs. This will assist both supervisor and pupil to identify strengths and/or weaknesses in performance.

If a pupil is undertaking pupillage in a set of chambers or an organisation where there are limited opportunities to take on advocacy work of their own, they should discuss with the pupil supervisor how sufficient practical experience of advocacy can be otherwise obtained. This

can be done, for example, through a placement at another set of chambers or undertaking FRU or other pro bono work.

### 3 Conferences

Pupils and supervisors should discuss in advance what is expected from pupils in a conference. It is usually the case that a pupil should not speak at all during the conference unless he/she is specifically invited to contribute. Pupils will gain most benefit from the conference if they ensure that they have read the case papers in advance and if they have the opportunity to discuss them before or afterwards. The pupil should take a full note of the conference, particularly the advice given by Counsel and any instructions given by the client.

#### 14.5 Appraisal (guidance and good practice for formal appraisal)

##### 1 General aims

Many chambers and training organisations have one or more formal reviews to monitor the work pupils have done over the course of their pupillage. Even if they do not have such a system, it can be helpful to carry out appraisal at the midpoint of each period of pupillage. If there are any difficulties or areas in which improvement is needed, this will give pupils the opportunity to address them during the remaining period of their pupillage. The review can also be used to monitor progress in completing the checklist and to identify any gaps in training.

ATOs may already have a system in place for conducting regular appraisals with pupils. If not, such systems may be introduced, along the lines of the summary below. Suggested forms are available for the purpose of guidance. These exemplars may be adapted, or existing proformas may be used.

The appraisal process is an opportunity to give structured and objective feedback to a pupil which should lead to improved performance. It is also an opportunity to obtain feedback from pupils about how they see their roles, the work they have done and the way in which they are being supervised. The appraisal is expected to achieve a range of objectives, including:

- Reviewing an individual's performance over the previous few months
- Setting objectives for future performance
- Identifying pupil's strengths and areas for development
- Encouraging a pupil to improve their performance where this is necessary
- Enabling pupil supervisors to provide feedback to pupils

Pupils should provide the major contribution. To enable the appraisal to be productive, the pupil must have time to reflect and analyse the circumstances prevailing, before the appraisal takes place. Pupil supervisors should ensure that they have regular meetings with pupils throughout the year and in particular after the appraisal to discuss progress and follow up any action that should have been taken.

##### 2 Preparation

Care should be taken to ensure that the pupil fully understands the appraisal process before the actual interview. They should also have a realistic view of their own performance ascertained through self-appraisal prior to the main appraisal interview (by completing the appraisal preparation form, although this is not compulsory).

A record of the previous performance appraisal(s) can provide valuable data and can serve as a useful reminder. However, caution should be exercised if the previous review was completed by a different person, whilst he/she was in a different role. The appraisal is not an opportunity to reiterate disciplinary messages or to enact formal procedures; these issues should be dealt with separately.

### 3 The role of the pupil: Self Evaluation

The supervisor should encourage the pupil to prepare for the interview by completing a copy of the appraisal preparation form. This is a good way of ensuring the pupil is ready for the interview, has a reasonable understanding of what to expect and obtains a structured approach to self-reflection. It also provides an opportunity for a pre-appraisal briefing.

A sample proforma for Self Appraisal is available on request. The pupil should be able to speak freely about his/her pupillage, including the following:

- the contents of his/her current roles and duties
- the supervisor's role and contribution to the overall objectives of pupillage
- strengths and weaknesses in relation to the skills, knowledge, abilities and qualities necessary to perform the duties required
- the resources available to help complete the work
- motivation, confidence and interest in the tasks assigned to the pupil
- performance against previously agreed objectives
- opportunities for improvement
- ideas for future objectives
- training and development
- the effectiveness of training previously received (where appropriate)
- the managerial style of their pupil supervisor
- relationships with colleagues/members of chambers

### 4 The Role of the Appraiser

The supervisor/appraiser should play several roles:

- Judge/assessor – giving feedback on the pupil's past performance
- Helper – helping the pupil to plan their future development
- Partner – working together to plan goals and targets for the next period

The supervisor should take the lead role objectively, drawing on real evidence of performance levels. The supervisor should be aware of their personality characteristics which may affect the appraisal interview. They should give praise where it is justified, and clarify and summarise the plans that are agreed.

The pupil may wish to use the appraisal to discuss personal problems. In such situations there may be a requirement for a counselling interview, separate from the appraisal itself.

### 5 Following up the appraisal interview.

Following or during the interview, the supervisor should complete the appraisal form. The completed form should be shared with the pupil who should sign the form, having been given the opportunity to make comments. The main points of any discussions which require follow-up action should be noted separately, listing the action(s) which have been agreed. The complete form should then be forwarded to the Head of Pupillage Committee in the ATO (sealed and marked 'confidential') and a copy also provided to the individual. The supervisor and pupil are jointly responsible for ensuring that agreed action is carried out.

### 6 Poor performance

Where poor performance is identified, or any areas that need improvement, these should be discussed in full and remedies sought. It is important for any problems to be recognised early on, and rectified, before the point of not signing off a pupil is reached. For example, poor attendance or poor time-keeping should be flagged up before they become a serious issue. Poor professional performance will need to be discussed in detail with measures identified to resolve the problem if possible. Employed Bar organisations will have Human Resources Departments to advise on such situations and how to implement capability procedures if these

become necessary. Advice may be sought from the BSB, depending on whether the issue is one of professional practice or performance, or related to a formal complaint. See section 9.8 for regulations on assessment and appeals against assessment decisions.

## 14.6 Record keeping

### 1 Checklists

The checklists can be used to plan the training that pupils receive during pupillage, to check that they are experiencing an adequate range of work and to review progress during pupillage. Once checklist(s) to be used during pupillage have been identified, pupils must ensure that they are familiar with them. If a checklist does not meet particular requirements, it can be discussed with the pupil supervisor how it might be amended. Bespoke checklists require BSB approval before they can be adopted.

It is not expected that pupils will be able to cover all the items in the specialist section of the checklist, particularly if they are based on Circuit. However, any items that are identified as being essential should be covered in the first six months and a good range of the other items should be covered. Pupils should identify in the appropriate section of the checklist anything that has not been covered and indicate how the gap in training can be remedied.

Pupils and supervisors will need to discuss how checklists will be used, but pupils must refer to the checklist regularly throughout pupillage, providing as much information as possible in the commentary section. The checklists will be used by the pupil supervisor to review progress and also during BSB monitoring of pupillage in chambers. They may also be useful evidence for chambers in considering tenancy applications.

### 2 Work diary

Pupil supervisors should encourage pupils to keep a work diary during pupillage to record work done and the amount of time spent on it (with cross references to outcomes, core competencies and 'tasks' as specified in the checklists). It is considered good practice for pupils to keep diaries or portfolios of all work undertaken and go through the checklist every three months filling in the relevant details of their experience. This is reviewed with their pupil supervisor and plans are made to address any gaps, and will enable the pupil supervisor to check when a particular assignment/task was undertaken, what exactly was done, who the pupil worked with/for, and how long it took the pupil to complete the work. It will also assist in the accurate completion of the checklist, which in turn aids the supervisor in certifying the satisfactory completion of pupillage. Keeping a work diary is also useful if a pupil applies for another pupillage or tenancy. This is so that completion of all requirements can not only be met but can be demonstrated as having been met. Not only does it provide an accurate record of experience, it also demonstrates organisational abilities that will be useful in practice.

### 3 Work Portfolio

Filing (or otherwise retaining) copies of paperwork produced is good practice from the start of professional life. An index of the names of the cases and the date when the work was done filed in chronological order is helpful to review earlier cases and precedents. The pupil will then be able to look back at work done before in similar cases, and be able to re-use legal research. The pupil will also be able to develop his/her own precedents. The ability for a pupil to review their own work side by side with the pupil supervisor's, or that of someone else in chambers with whom they have worked, is an excellent way for a pupil to become self-critical and develop good paperwork skills.

If a pupil applies for a tenancy in chambers, they may be asked to submit work for consideration, so good record keeping is essential. Client confidentiality must be maintained by blocking out identifying information.

### 4 Paperwork

Although pupils will have had experience of paperwork on the Bar Course, they will require assistance in making the transition to dealing with real cases and real circumstances.

Individual pupil supervisors may well vary in the nature and extent of the feedback that they give on paperwork, but pupils should always feel able to ask for more detailed comments on work if they are not sure where they have gone wrong. It is equally important for a pupil supervisor to identify what a pupil is doing well, so they can build on their strengths.

Pupils should expect to read their supervisor's opinions and draft pleadings and to have the opportunity of discussing these with him/her. It is a good idea to keep records of such work in order to build up a library of precedents. Practice in drafting pleadings and writing opinions is an important part of most pupillages and the supervisor should discuss the pupil's attempts and provide regular feedback on progress. The accuracy and speed of work are important factors.

## 5 Data Protection

The Data Protection Act 1998 came into force on 1 March 2000. Barristers working in chambers are required to register under the Act if they use a computer for processing of personal data. Whilst first six pupils are considered to be processing data on behalf of a supervisor, second six pupils will be doing their own data processing and must register.

Pupils can register online via the Office of the Information Commissioner website at <http://www.ico.gov.uk/> or by phoning the notification helpline (0303 123 1113). The cost of notification is currently £35 per year. It is a criminal offence not to register if there is a requirement to do so under the Act.

### 14.7 Conduct and Etiquette

All pupillages should involve training in professional conduct and etiquette. Part one of each checklist/specification identifies the core issues that should be addressed. Pupils should familiarise themselves with the Code of Conduct in the first six months of pupillage and ensure that they are prepared for dealing with common ethical dilemmas that may arise in the second six. If issues arise in practice, pupils should, wherever possible, consult with their pupil supervisor about the appropriate course of action. They may also contact the Bar Council's Professional Practice Section if there are any specific queries (There is a hotline number available for advice: 020 7611 1307).

### 14.8 The working environment

#### 1 Chambers

The way that sets of chambers are administered varies according to size, the area of practice and the extent to which information technology is used. In smaller sets, members of chambers will carry out administrative functions themselves. Pupils should learn as much as possible about how chambers are administered, in order both to maximise efficiency during pupillage and to provide insight into issues that may be dealt with as a tenant. It is particularly important that pupils understand the role and function of barristers' clerks. A clerk usually maintains diaries of work, liaises with courts, solicitors and other chambers, fixes and recovers fees and promotes barristers and the Chambers as a whole.

Most clerks are members of the Institute of Barristers' Clerks and have a variety of qualifications and experience. The most senior clerks will have significant responsibilities including booking instructions and hearings, negotiating fees, and managing and developing the practices of individual barristers and the set of chambers as a whole. Some chambers have now replaced senior clerks with salaried practice managers or chief executives.

In the non-practising six months, pupils should aim to develop a good working relationship with the clerks in preparation for when they will be working on their own account. The clerks may also be able to let pupils know if other members of chambers, particularly the junior tenants, are appearing in any cases that the pupil supervisor might feel it would be useful for a pupil to attend. The clerks should be kept informed of pupils' movements if they need to leave chambers, and be provided with home/mobile telephone numbers and any other contact

numbers in case they need to get in touch with pupils outside office hours. Pupils must also let the clerk(s), as well as their supervisor, know if they are not able to come into chambers for any reason.

During the practising six months, pupils will need to establish whether they are required to pay clerks' fees. Chambers vary in their requirements, but pupils must be clearly informed whether or not clerks' fees are payable and, if so, on what basis, before they receive any instructions on their own account. Pupils may also be required to contribute towards photocopying and other administrative costs, but they should not be asked to pay any rent. Pupils should establish what work is available for practising pupils, and how and when it is distributed. Pupil supervisors should review the distribution of work to ensure male and female pupils of all ethnic groups are given fair and equal access to the opportunities available in chambers. It is vital during this period of pupillage that pupils keep clerks informed of their whereabouts and also warn them of any commitments that may affect their availability.

## 2 Other Organisations (Employed Bar)

The way that ATOs in the Employed Bar operate will vary enormously, according to size, number of staff, and areas of practice. All relevant information should be provided to pupils, including 'clerking' of administrative tasks, secretarial support etc. Practice managers and office administrators may be used but, in smaller organisations, some barristers will carry out many administrative functions themselves. During pupillage it is useful for pupils to learn as much as possible about how the organisation is administered, in order to maximise efficiency and provide insight into issues that will need to be dealt with if permanent employment follows.

It can be helpful, for pupils at the employed Bar to have a period of time/secondment to Chambers, where they may learn how chambers operate and the function of barristers' clerks. At the Employed Bar, support should similarly be provided (e.g. by salaried practice managers) on booking instructions and hearings, negotiating fees, and managing and developing the practices of individuals. In the non-practising six months, pupils should keep their own appointments diaries up to date, as well as checking the diary of their supervisor so that they know what conferences and court hearings are coming up. The clerks (or managers) should be kept informed of pupils' movements if they need to leave the premises, and be provided with home/mobile telephone numbers and any other contact numbers in case they need to get in touch with pupils outside office hours. Pupils must also let relevant managers, as well as their supervisor know if they are not able to come in for any reason.

During the practising six months, pupils must be clearly informed of any fees that are payable and, if so, on what basis, before they receive any instructions on their own account. Pupil supervisors should review the distribution of work to ensure male and female pupils of all ethnic groups are given fair and equal access to the opportunities available. It is vital during this period of pupillage that pupils keep relevant staff informed of their whereabouts and also warn colleagues of any commitments that may affect their availability.

### 14.9 Duration, hours, leave and sick leave

#### 1 Duration of Pupillage

As stated in Chapter 8, the duration of pupillage must be a minimum of twelve calendar months (unless a reduction in pupillage has been approved). Pupils should not move to another ATO (to complete their 12 months and/or to commence a 'third six') before this period is completed since they will be at risk of not being signed off. Similarly ATOs should not accept pupils on these terms until they have been signed off as having successfully completed pupillage in the ATO which agreed to provide the twelve month pupillage.

#### 2 Hours of work and holiday entitlement

The Code of Conduct requires pupils to apply themselves full-time to pupillage, which requires a minimum of 35 hours per week. Arrangements for part time pupillage are however encouraged by the BSB. The pupil supervisor will usually specify the minimum periods of time

in which a pupil is expected to be in chambers or office, and pupils may be expected to work additional hours as required.

The European Working Time Directive will apply to pupils at the Employed Bar. It has not been established that it applies to the self-employed Bar but it may be taken as a guide to good practice, at least in relation to holidays (e.g. pupils are entitled to a minimum of four weeks' leave per annum and pupils should take no more than two weeks leave in each period of pupillage. Longer breaks are not normally possible during pupillage). Pupils will need to apply to the BSB for dispensation from the regulations if they want or need to take longer breaks during pupillage.

#### 4 Illness and other extenuating circumstances

It should be made clear to pupils what the policies and procedures are in relation to sick leave. If a pupil has an excessive number of days' sick leave (at discretion of the supervisor) in any six month period of pupillage, the pupillage should be extended by the period of absence. Pupils must notify the Standards & Quality Section of the new date, as notification of a material change in pupillage arrangements. Other extenuating circumstances (such as personal problems, bereavement) may be taken into account in determining reasonable absence and/or the need for extension of pupillage. Maternity/paternity leave should similarly be discussed with the supervisor.

#### 5 Pupils with disabilities

Special considerations or 'reasonable adjustments' may be necessary for those with disabilities. These may apply to physical working conditions (e.g. access to buildings, specialised IT support or equipment) as well as to the supervision and assessment of those with particular needs. Advice can be provided by the BSB Equality and Diversity officers.

### **14.10 Part time work, pro bono and voluntary work**

#### 1 Part time work

Pupils may take part time work with the permission of the pupil supervisor, provided that it will not materially interfere with training. Pupils may be able to obtain part time work that has some relevance to work as a barrister, for example, teaching, lecturing or libel reading for the press. Relevant opportunities are advertised on the notice boards in the Inns and in Bar News, Counsel magazine and in the national press.

#### 2 Pro Bono and voluntary work

Pupils may also be interested in undertaking voluntary work for organisations such as Justice or Liberty or undertaking pro bono work for the Free Representation Unit (FRU), a Law Centre or Citizen's Advice Bureau. They will need to ensure that they comply with the Code of Conduct in respect of any voluntary work that is undertaken. In the non-practising six, a pupil can act as a legal adviser or offer legal services for any organisation provided that he/she does not, in connection with the supply of such services, hold him/herself out as a barrister or exercise any rights that he/she has as a barrister. For example, a pupil could not describe him/herself as a barrister on any printed material, advertising, publicity or noticeboard; or describe him/herself as a barrister to any client or prospective client; or wear robes etc. In the second six, a pupil may supply legal services at a designated Legal Advice Centre on a voluntary basis provided they do not receive any fee or reward for services and do not have any financial interest.

#### ***Free Representation Unit***

The Free Representation Unit is a registered charity that provides legal representation for individuals at tribunals where legal aid is unavailable and those individuals cannot afford to pay for representation. FRU offers representation at a range of tribunals including

Employment Tribunals, the Employment Appeal Tribunal, Criminal Injuries Compensation Boards, Immigration Adjudication Hearings, Medical Appeal Tribunals, Disability Appeal Tribunals and Social Security Appeal Tribunals, and Social Security Commissioners. Before a pupil becomes a registered representative and can take on cases, he/she must attend the FRU training course, second an experienced representative and write two opinions. For further information contact FRU ([www.freerepresentationunit.org.uk](http://www.freerepresentationunit.org.uk)).

### **Law Centres**

Law Centres offer members of the public free legal advice on areas such as employment, immigration, housing and welfare benefits. Volunteers are often needed to help with evening advice sessions and may be asked to help with casework by doing research, writing letters and making telephone calls. A full list of Law Centres together with their telephone numbers is available from the Law Centres Federation at 293-299 Kentish Town Road, London, NW5 2TJ, website: [www.lawcentres.org.uk](http://www.lawcentres.org.uk)

### **Citizens Advice Bureau**

The Citizens Advice Bureau Service offers free, independent and confidential advice to members of the public on problems such as debt and consumer issues, benefits, housing, legal matters, employment, and immigration. Advisers can help fill out forms, write letters, negotiate with creditors and represent clients at court or tribunal. There are 700 Bureaux in England, Wales and Northern Ireland, with more than 20,000 volunteers working in the Service. Pupils can find out more about volunteering from local CABs or from the National Association's website at [www.nacab.org.uk](http://www.nacab.org.uk).

## **14.11 Careers and progression to tenancy, employed barrister positions**

### **1 Career Development Loans**

The banks offer various schemes for career development loans, which may be considered.

### **2 Devilling**

The Code of Conduct requires a barrister to pay a pupil for any work done for him or her which because of its value to him or her warrants payment, unless the terms of the pupillage award is arranged such that it is in lieu of payment for any individual item of work. Any earnings from devilling are taxable as professional receipts.

### **3 Careers and progression to tenancy/employed practice**

#### *A Career in Self-employed Practice*

The Pupillage Policy Document will state what the policies and procedures are for recruitment following the completion of pupillage. Pupils should seek the advice of the pupil supervisor about the likelihood of a vacancy and whether and how they should make an application. It is important to consider what alternatives might be available to pupils if an application is not successful. If a pupil is made an offer at another set of chambers, and a decision must be made on this, the pupil should make their pupil supervisor aware of their need to be told where they stand as early as possible.

Where pupillage is undertaken in an organisation other than chambers they should familiarise themselves with the relevant recruitment procedures. The organisation might have particular procedures for its own pupils/trainees and their Pupillage Policy Document will provide information about this. Pupils may wish to discuss with their supervisor what other employment options may be available in case he/she is not offered a permanent position in the organisation.



### *A Career in Employed Practice*

For information about careers at the employed Bar contact the Bar Association for Local Government and the Public Service (BALGPS) or the Bar Association for Commerce, Finance and Industry (BACFI), contact details are to be found in Appendix P. Pupils may also contact the Employed Barristers Committee at the Bar Council for further details about a career at the Employed Bar.

### *Judicial Assistants Scheme*

Barristers who have completed 12 months' pupillage are eligible to apply for full time and part time appointments for one, two or three law terms as assistant to Lords Justices on appeals and applications in the civil division at the Royal Courts of Justice. Candidates are required to have demonstrated a very high intellectual ability. Advertisements are placed in the *Times* and in *Counsel* magazine in January and June each year and further information is available from the Courts Service website at [www.hmcourts-service.gov.uk](http://www.hmcourts-service.gov.uk).

### *Other Employment Opportunities*

Barristers have very good employment prospects outside the self-employed and employed bar. Many of the advertisements that appear in the legal press seek lawyers from either branch of the profession, and legal recruitment agencies will consider applications from barristers.

## 4 Continuing Professional Development

The compulsory pupillage courses are the first stage of Continuing Professional Development (CPD) that is required of all practising barristers throughout their careers. All new practitioners are required to undertake a minimum of 45 hours of accredited CPD, including nine hours of advocacy training and three hours of ethics by the end of the first three years of practice. On completion of the 45 hours of accredited continuing professional development barristers are required to undertake 12 hours of continuing professional development per year throughout their careers. CPD hours cannot be accrued whilst in pupillage. Further information on CPD is available on the BSB website

## 15 Complaints and Grievances

### 15.1 General Principles

The BSB requires all ATOs to have complaints and grievance procedures in place for pupils (para 403.2(d) of the Code and Annex S to the Code). The overarching aim should be to resolve grievances both fairly and as soon as possible, through discussion, at the point at which they occur.

### 15.2 Grievance procedures

It is important that, if a pupil/supervisor relationship is not working well, alternative independent sources of advice are available to the pupil. By mutual agreement between the pupil and the ATO, and where permitted by the terms of any sponsorship agreement, supervisory responsibilities can be changed, at the request of either the pupil or a supervisor.

- Each ATO that takes pupils should have a written grievance procedure, which must be brought to the attention of each pupil at the beginning of the pupillage.
- Pupils should be able to raise matters concerning pupillage with a member of chambers or other lawyer in the ATO other than their pupil supervisor. That person should be identified in the grievance procedure (e.g. Head of Chambers, Director of Pupil Training, three person committee etc, responsible for internal resolution of a dispute). The grievance procedure should also set out clearly what needs to be done in order to invoke the procedure and how the procedure operates.
- Ultimately the pupil should be able to take a complaint either to the Head of Chambers or Pupillage Training Principal/Director of Pupil Training or to a three-person committee appointed for the purpose of hearing complaints pursuant to the grievance procedure. The method of final appeal should be identified in the grievance procedure.

### 15.3 Advice and guidance

#### 1 Internal

It is a primary responsibility of the pupil supervisor to give appropriate advice, support and guidance and pupils should approach their supervisor with any concerns that they may have. If a pupil feels they cannot do so, other members of chambers (particularly junior tenants) or other lawyers in the ATO, may be able to help either informally or through the Pupillage Committee. Sometimes a pupil might simply wish to discuss alternative courses of action (including with other pupils). If a pupil feels they cannot approach their pupil supervisor, they should contact the Pupillage Training Principal/Director of Pupil Training or the Human Resources Department of the organisation for advice and assistance. Organisations should have a complaints and grievances procedure for employees to which pupils can refer. Some ATOs, recognising the dilemma faced by a pupil wishing to pursue a grievance, have appointed person(s) to deal with such internal complaints. They should deal with the issue and ensure that the pupil's prospects are not jeopardised by the mere fact of a complaint having been made. A further option, within chambers, is to approach the Head of Chambers who is required by the Code to ensure that pupils are being treated properly and fairly. It is important that pupils (and others) keep contemporaneous notes of incident(s) that may cause a pupil to think that he/she has been treated unfairly or in a discriminatory fashion. This will provide useful evidence to assist if a dispute arises.

#### 2 External

Sometimes a pupil is unable or unwilling to have the matter dealt with internally and ultimately it must be for the pupil to decide which course of action is the most appropriate. It may also be inappropriate for the complaint to be dealt with internally, depending on the circumstances. Various sources of advice and information are available that can assist pupils in making such

a decision. Many matters can and should be resolved in-house and, to assist with this, the BSB, the Bar Council and the Inns have developed various formal and informal procedures for helping to resolve grievances. There is no single external body which is empowered or required to take responsibility to intervene in problem situations with a view to resolve them or preventing them from escalating. The following outside sources of help and advice are available:

- The BSB's Pupillage Officer, who may refer matters to Complaints and/or the relevant BSB Committee (Tel: 0202 611 1444)
- The Bar Council's Helpline (Tel: 0207 611 1430) The Bar Council has a Pupillage panel of practising barristers who will investigate confidential and non confidential complaints
- The Equality & Diversity helpline (Tel: 020 7611 1310)
- The Education Officer in the pupil's Inn of Court (see Appendix P)

A pupil is often in a difficult position when he/she wishes to complain but feels that the making of a complaint may prejudice their continued pupillage and/or any tenancy decision. Many pupils do not wish to identify their pupil supervisor or set of chambers. Any pupil in such a position is encouraged in the first instance to talk confidentially to the BSB Pupillage Officer or to their Inn's Education Officer. Complaints about supervisors may however be pursued formally through the BSB's Complaints system.

Where a pupil does not feel able to pursue a complaint during pupillage, the BSB would still welcome any feedback via the questionnaires that are distributed at the end of each period of pupillage. All such information is treated in the strictest confidence. Where discussion and mediation (as suggested above) is not successful, then a formal complaint may need to be pursued, in accordance with the Code.

#### **15.4 Non completion**

Where a pupil has been refused a certificate of satisfactory completion of pupillage by his/her supervisor/ATO then he/she should consult BTR55 and Part X, and also the criteria and guidelines for an application to the Qualifications Committee for a review under Part X of the BTRs. The Qualifications Committee does not normally permit the oral hearing of an appeal. This situation may relate or be linked to a complaint or grievance of one form or another.

#### **15.5 Complaints against pupils (Disciplinary and other offences)**

Complaints and grievances against pupils are rare. Any formal complaints against pupils concerning their professional practice, ethics etc should be pursued through the BSB's Complaints system. Any resulting disciplinary action would involve the BSB. The Inn of Court of which the pupil is a member plays no formal part in the disciplinary system except via the Council of the Inns of Court (COIC) which arranges tribunals. An individual Inn would have a role in pronouncing any findings of a disciplinary tribunal.

## 16 Quality Assurance Procedures

### 16.1 Quality Assurance principles and processes

Procedures for Quality Assurance relate to:

- the approval, monitoring and review of ATOs,
- the training and accreditation of pupil supervisors, and
- the monitoring of pupillage arrangements (including evidence of feedback on performance).

Systems and procedures have been in place but are currently being further developed for the sample monitoring of pupillage (either in chambers or at the Employed Bar), and for 'triggered' visits where investigation of poor practice is justified.

Systems are also being developed for the wider monitoring of chambers, and the use of sample or triggered visits to chambers in order to ensure adherence to the regulations as well as the identification, nurturing and exchange of good practice.

### 16.2 Committee structures of the BSB for pupillage

The committee structure is currently under review.

### 16.3 Monitoring of pupillage in ATOs

The BSB is committed to ensuring that all pupillages meet the highest standards and runs a monitoring of pupillage scheme to ensure that the quality of the training environment provided by ATOs is kept under review. ATOs that take pupils are monitored and, as part of this process, pupils will be given the opportunity to give feedback on pupillage by means of a confidential questionnaire distributed with the provisional and full qualification certificates. A sample of pupils will be invited to participate in an interview about their experiences of pupillage and a sample of Approved Training Organisations may be visited each year.

The monitoring scheme that is being developed aims to improve the overall quality of pupillages through the promotion of good practice and is not, therefore, an appropriate mechanism for resolving specific problems, grievances or complaints arising in the course of an individual pupillage. Such problems might vary from not obtaining proper supervision or sufficient feedback, or being asked to do excessive or inappropriate tasks, possibly due to being the victim of discrimination, harassment or other serious misconduct.

Monitoring and review of ATOs will take place from time to time on a rotating basis in order to identify areas for improvement and also areas of good practice for dissemination and improvement of training in general – not resulting from any particular cause for concern.

### 16.4 Chambers Monitoring Scheme

A system of Chambers Monitoring was piloted in 2008 which was initially, at this developmental stage, designed to focus on the operation of Complaints, Equality & Diversity and Pupillage in chambers. The system is being further developed.

## Appendix A – Bar Training Regulations [excerpt]

### PART V - THE PROFESSIONAL STAGE

27. A person commences the Professional Stage of training on commencing pupillage in accordance with these Regulations and completes the Professional Stage by:
- (a) satisfactorily completing 12 months of pupillage and such further training as may be required by the Board; and
  - (b) being issued with a Full Qualification Certificate.
28. Before commencing the Professional Stage, a person must have completed (or been exempted under Part VII of these Regulations from) the Vocational Stage.
29. A person may not commence the Professional Stage more than five years after completing the Vocational Stage except with the permission of the Board and after complying with any condition which the Board may impose.

### Pupillage

30. Pupillage is divided into two parts:
- (a) a non-practising period of six months; and
  - (b) a practising period of six months.
31. Except with the written permission of the Board, the non-practising period of pupillage must be undertaken:
- (a) in England and Wales; and
  - (b) in a continuous period of six months.
32. Except with the written permission of the Board, the practising period of pupillage must:
- (a) commence within 12 months after completion of the non-practising period;
  - (b) be undertaken in a Member State; and
  - (c) be completed within an overall period of nine months.
33. Any period of pupillage must provide training which is adequate and which complies with such criteria as may be published by the Board.
34. Except as provided in Regulation 42, any period of pupillage must be undertaken:
- (a) in an Approved Training Organisation; and
  - (b) with a barrister who is a registered pupil supervisor.
35. Schedule C to these Regulations sets out rules applicable to pupil supervisors.
36. During any period of pupillage the pupil must:
- (a) be diligent in receiving the instruction given; and
  - (b) observe all legal and professional obligations of confidence.

### Approved Training Organisations

37. The Board will designate an organisation as an Approved Training Organisation if it is satisfied:
- (a) that one or more registered pupil supervisors who are available to provide pupillage training practise in the organisation; and
  - (b) that the organisation has made proper arrangements for dealing with pupils and pupillage in accordance with the Code of Conduct.
38. The Board may withdraw approval from an Approved Training Organisation if it considers following investigation:
- (a) that pupillage training provided by the organisation is or has been seriously deficient; or
  - (b) that the organisation has not made proper arrangements for dealing with pupils and pupillage in accordance with the Code of Conduct.
39. The Board will give notice in writing:
- (a) in the case of a decision to refuse to designate an organisation as an Approved Training Organisation, to that organisation; and
  - (b) in the case of a decision to withdraw approval from an Approved Training Organisation, to:
    - (i) that organisation;
    - (ii) any person who is undertaking or has agreed to undertake a pupillage in that organisation; and
    - (iii) the Inn of which any such person is a member.
40. Any person or organisation to whom the Board is required to give notice of a decision under Regulation 39 may request a review of the decision under Part X of these Regulations, provided that the request is made in writing to the Board within one month of the date when notice of the decision was given.
41. If the Board withdraws approval from an Approved Training Organisation, the organisation may not claim repayment of any pupillage award or other sum paid to any pupil or prospective pupil.

### External Training

42. With the written permission of the Board, part or all of the practising period of pupillage may be satisfied by training:
- (a) with a solicitor, judge or other suitably qualified lawyer who is not a registered pupil supervisor; and/or
  - (b) in an organisation which is not an Approved Training Organisation but which, in the opinion of the Board, provides suitable training and experience.

### Registration of Pupillage

43. Before commencing any period of pupillage (including any period of external training) a person must apply to the Board for registration of the pupillage by submitting an application in the form prescribed by the Board.
44. The Board will register the pupillage if it is satisfied that the application has been duly

completed and that the pupillage complies with these Regulations.

45. If a person applies to the Board for registration of a pupillage after the pupillage has commenced, the pupillage will be treated as having commenced on the date of receipt of the application, unless the Board permits otherwise.
46. If the Board refuses to register a pupillage, it will inform the pupil in writing of its decision and the reasons for it.
47. If the Board refuses to register a pupillage, the pupil may request a review of the decision under Part X of these Regulations, provided that the request is made in writing to the Board within one month of the date when notice of the decision was given.
48. If any of the information provided in an application for registration of a pupillage changes before the pupillage has been completed, the pupil must promptly notify the Board in writing of the change.

### **Qualification Certificates**

49. On completion of the non-practising period of pupillage, the Board will issue the pupil with a Provisional Qualification Certificate provided that the pupil has been called to the Bar under Part IX of these Regulations and the Board is satisfied:
  - (a) that the pupil has satisfactorily completed the non-practising period of pupillage and any further training required under Regulation 27(a); and
  - (b) that the pupillage is registered and complied with these Regulations.
50. On completion of the practising period of pupillage, the Board will issue the pupil with a Full Qualification Certificate if the pupil has a Provisional Qualification Certificate and the Board is satisfied:
  - (a) that the pupil has satisfactorily completed the practising period of pupillage and any further training required under Regulation 27(a); and
  - (b) that the pupillage is registered and complied with these Regulations.
51. For the purpose of these Regulations, a pupil is to be treated as having satisfactorily completed a period of pupillage if the pupil:
  - (a) has been diligent in receiving the instruction given; and
  - (b) has achieved the minimum level of competence required of a pupil at the end of the relevant period.
52. The Board may accept as evidence that a pupil has satisfactorily completed any period of pupillage a certificate to this effect from the pupil supervisor (or person responsible for external training) with whom the pupil has completed that period.
53. If a pupil supervisor is unable or unwilling to provide a certificate that a pupil has satisfactorily completed a period of pupillage, the Board may accept such a certificate signed by the Head of Chambers or person in charge of pupillage in the training organisation where the pupillage has been undertaken if the certificate contains a satisfactory explanation of why the pupil supervisor has not signed it.
54. If the Board is not satisfied:

- (a) that the pupil has satisfactorily completed a period of pupillage, and/or
- (b) that the pupillage is registered and complied with these Regulations,

the Board may specify further training which the pupil must satisfactorily complete before the Board will issue the pupil with a Provisional Qualification Certificate or a Full Qualification Certificate (as the case may be).

55. If the Board refuses to issue a Provisional Qualification Certificate or a Full Qualification Certificate, the pupil may request a review of the decision under Part X of these Regulations, provided that the request is made in writing to the Board within one month of the date when notice of the decision was given.



## Appendix B – Bar Training Regulations [excerpt]

### SCHEDULE C – Pupil Supervisors (*Regulation 35*)

#### Acting as a Pupil Supervisor

1. A barrister may act as a pupil supervisor if the barrister:
  - a. is on the register of approved pupil supervisors kept by the Board;
  - b. has a current practising certificate; and
  - c. has regularly practised as a barrister during the previous two years.

#### Registration as a Pupil Supervisor

2. The Board may enter a barrister on the register of approved pupil supervisors if the barrister is approved by an Inn of which the barrister is a member.
3. An Inn must approve a barrister as a pupil supervisor if:
  - a. the barrister has a current practising certificate;
  - b. the Inn is satisfied that the barrister has the necessary experience and is otherwise suitable to act as a pupil supervisor; and
  - c. the barrister has submitted an application in accordance with paragraph 5.
4. To have the necessary experience to act as a pupil supervisor a barrister should normally:
  - a. have practised in the United Kingdom or another Member State as a barrister (other than as a pupil who has not completed pupillage in accordance with these Regulations) or as a member of another Authorised Body for a period (which need not have been continuous and need not have been as a member of the same Authorised Body) of at least six years in the previous eight years; and
  - b. for the previous two years have regularly practised as a barrister and been entitled to exercise a right of audience before every court in England and Wales in relation to all proceedings.

#### Application Procedure

5. A barrister who wishes to be entered on the register of approved pupil supervisors must submit to the Inn an application in the form currently prescribed by the Board. The application must be supported:
  - a. By an independent person who is a High Court Judge or Circuit Judge, a Leader of a Circuit, a Deputy High Court Judge, a Recorder, a Queen's Counsel, a Master of the Bench of an Inn, Treasury Counsel or a person of comparable standing who is able to comment from personal knowledge on the applicant's suitability to act as a pupil supervisor; and
  - b. Subject to sub-paragraph (c) below,
    - i. in the case of a self-employed barrister, by the applicant's Head of Chambers, or
    - ii. in the case of an employed barrister, by a more senior lawyer employed in the same organisation and who has direct knowledge of the work of the

applicant;

- c. If the applicant is a Head of Chambers, or there is no more senior lawyer employed in the same organisation with the required knowledge, or for any other reason the support of the person referred to in sub-paragraph (b) is not available, by a second person falling within sub-paragraph (a) above.

### **Training of Pupil Supervisors**

6. The Board, in consultation with the Inns, may and will normally require pupil supervisors to undertake training before they may be entered or after they have been entered on the register of approved pupil supervisors.

### **Removal from the Register of Pupil Supervisors**

7. The Board may remove a barrister's name from the register of approved pupil supervisors if the barrister:
  - a. ceases to practise as a barrister or is suspended from practice as a barrister; or
  - b. requests the Board in writing to be removed from the register; or
  - c. fails to complete any training required under paragraph 6; or
  - d. is found by the Board to be unsuitable for any reason to act as a pupil supervisor; or
  - e. has not acted as a pupil supervisor for the previous five years.
8. If the Board decides that a barrister's name should be removed from the register of approved pupil supervisors, it will notify the barrister and the Inn which approved the barrister as a pupil supervisor of its decision and of the reasons for it.

### **Duties of Pupil Supervisors**

9. A pupil supervisor must when responsible for supervising any pupil:
  - a. take all reasonable steps to provide the pupil with adequate tuition, supervision and experience;
  - b. have regard to any pupillage guidelines issued by the Board and to the Equality Code for the Bar; and
  - c. ensure that the pupil prepares for and attends any further training required by the Board such as advocacy training provided by the pupil's Circuit or Inn.
10. A pupil supervisor may not be responsible for supervising more than one pupil at a time except with the approval in writing of the Board.

### **Complaints**

11. If any complaint or other matter which appears to affect the suitability of a barrister to continue to act as a pupil supervisor comes to the notice of the Inn which approved the barrister, the Inn must inform the Board of the matter.
12. If any complaint or other matter which appears to affect the suitability of a barrister to continue to act as a pupil supervisor comes to the notice of the Board, the Board will investigate the matter.
13. Following such an investigation, the Board may:
  - a. dismiss any complaint; or

- b. take no action; or
- c. if in its opinion the matter is such as to require informal treatment, draw it to the barrister's attention in writing and, if thought desirable, direct the barrister to attend upon a nominated person for advice; or
- d. if in its opinion the conduct disclosed shows that the barrister is unsuitable to act as a pupil supervisor, remove the name of the barrister from the register of approved pupil supervisors.

**Review**

14. A barrister whose application to be approved as a pupil supervisor is rejected or whose name is removed from the register of approved pupil supervisors may request a review of the decision under Part X of these Regulations, provided that the request is made in writing to the Board within one month of the date when notice of the decision was given.

## Appendix C – Code of Conduct [excerpt]

### Part VIII - Miscellaneous

#### Pupils

801. A barrister who is a pupil must:

- (a) comply with Part V of the Bar Training Regulations<sup>1</sup>;
- (b) apply himself full time to his pupillage save that a pupil may with the permission of his pupil-supervisor or Head of Chambers take part time work which does not in their opinion materially interfere with his pupillage;
- (c) preserve the confidentiality of every client's affairs and accordingly paragraph 702 applies to him in the same way as it does to his pupil-supervisor and to every person whom he accompanies to Court or whose papers he sees.

802. A barrister who is a pupil may supply legal services as a barrister and exercise a right of audience which he has by reason of being a barrister provided that:

- (a) he has completed or been exempted from the non-practising six months of pupillage; and
- (b) he has the permission of his pupil-supervisor or Head of Chambers;

provided that such a barrister may during the non-practising six months of pupillage with the permission of his pupil-supervisor or Head of Chambers accept a noting brief.

803.1 So long as he is a pupil a self-employed barrister may not become or hold himself out as a member of chambers or permit his name to appear anywhere as such a member.

803.2 A barrister who is a pupil of an employed barrister or who pursuant to Regulation 42 of the Bar Training Regulations<sup>1</sup> spends any period of external training with an employed barrister or with a solicitor shall be treated for the purpose of the Code as if he were during that period employed by the employed barrister's employer or by the solicitor's firm as the case may be.

#### Pupil-supervisors

804. A barrister who is a pupil-supervisor must:

- (a) comply with Part V and Schedule C of the Bar Training Regulations<sup>1</sup>;
- (b) take all reasonable steps to provide his pupil with adequate tuition supervision and experience;
- (c) have regard to the pupillage guidelines issued from time to time by the Bar Council and to the Equality Code for the Bar.

805. Except where a pupil is in receipt of an award or remuneration which is paid on terms that it is in lieu of payment for any individual item of work, a barrister must pay any pupil (or in the case of an employed barrister ensure that a pupil is paid) for any work done for him which because of its value to him warrants payment.

## Appendix D – Code of Conduct, Annex R

### The Pupillage Funding and Advertising Requirements

#### Funding

1. The members of a set of chambers must pay to each non-practising chambers pupil by the end of each month of the non-practising six months of his pupillage no less than:

(a) £833.33; plus

(b) such further sum as may be necessary to reimburse expenses reasonably incurred by the pupil on:

- (i) travel for the purposes of his pupillage during that month; and
- (ii) attendance during that month at courses which he is required to attend as part of his pupillage.

2. The members of a set of chambers must pay to each practising chambers pupil by the end of each month of the practising six months of his pupillage no less than:

(a) £833.33; plus

(b) such further sum as may be necessary to reimburse expenses reasonably incurred by the pupil on:

- (i) travel for the purposes of his pupillage during that month; and
- (ii) attendance during that month at courses which he is required to attend as part of his pupillage; less

(c) such amount, if any, as the pupil may receive during that month from his practice as a barrister; and less

(d) such amounts, if any, as the pupil may have received during the preceding months of his practising pupillage from his practice as a barrister, save to the extent that the amount paid to the pupil in respect of any such month was less than the total of the sums provided for in sub-paragraphs (a) and (b) above.

3. The members of a set of chambers may not seek or accept repayment from a chambers pupil of any of the sums required to be paid under paragraphs 1 and 2 above, whether before or after he ceases to be a chambers pupil, save in the case of misconduct on his part.

#### Advertising

4. All vacancies for pupillages must be advertised on a website designated by the Bar Council and the following information must be provided:

(a) The name and address of chambers.

(b) The number of tenants.

(c) A brief statement of the work undertaken by chambers e.g. "predominately criminal".

(d) The number of pupillage vacancies.

(e) The level of award.

- (f) The procedure for application.
- (g) The minimum educational or other qualification required;
- (h) The date of closure for the receipt of applications.
- (i) The date by which the decisions on the filling of vacancies will be made.

### **Application**

5. The requirements set out in paragraphs 1 to 4 above:

- (a) apply in the case of pupillages commencing on or after 1st January 2003;
- (b) do not apply in the case of pupils who were granted exemption from the Vocational Stage of training under Regulation 59 of the Bar Training Regulations;
- (c) do not apply in the case of pupils who are undertaking a period of pupillage in a set of chambers as part of a pupillage training programme offered by another organisation that is authorised by the Bar Council to take pupils.
- (d) do not apply in the case of pupils who have completed both the non-practising and the practising six months of pupillage;
- (e) save as provided in paragraph 3 above, do not apply in respect of any period after a pupil ceases, for whatever reason, to be a chambers pupil; and
- (f) may be waived in part or in whole by the Pupillage Funding Committee

6. For the purposes of these requirements:

- (a) "chambers pupil" means, in respect of any set of chambers, a pupil undertaking the non-practising or practising six months of pupillage with a pupil-master or pupil-masters who is or are a member or members of that set of chambers;
- (b) "non-practising chambers pupil" means a chambers pupil undertaking the non-practising six months of pupillage;
- (c) "practising chambers pupil" means a chambers pupil undertaking the practising six months of pupillage;
- (d) "month" means calendar month commencing on the same day of the month as that on which the pupil commenced the non-practising or practising six months pupillage, as the case may be;
- (e) any payment made to a pupil by a barrister pursuant to paragraph 805 of the Code of Conduct shall constitute an amount received by the pupil from his practice as a barrister; and
- (f) the following travel by a pupil shall not constitute travel for the purposes of his pupillage:
  - (i) travel between his home and chambers; and
  - (ii) travel for the purposes of his practice as a barrister.

## Appendix E – Equality & Diversity Code [excerpts - relating to pupillage]

### SECTION 1: A. RECRUITMENT: PUPILS AND TENANTS

#### General Guidance

- 1.1 The same broad principles apply to the recruitment of pupils, starter tenants, established practitioners and staff. Discrimination by barristers on the ground of sex, race, disability, sexual orientation and religion or belief in recruitment is unlawful. Discrimination on the ground of age is professional misconduct.

#### Advertisement

- 1.2 Vacancies should be advertised. A failure to advertise vacancies for pupils or tenants places Chambers and individual barristers at risk of allegations of indirect discrimination. It is good practice to include in advertisements:
- encouragement of applications from groups which are under-represented in chambers;
  - a statement of compliance with the Equality and Diversity Code;
  - a statement indicating preparedness to make reasonable adjustments for disabled candidates.

Where Chambers use agencies or head hunters they should ensure that Chamber's equality policy is included in the instructions given to the agency

#### Application Forms

- 1.3 An application form is generally preferable to curriculum vitae. An application form enables the assessment of candidates to be made on a clearly defined comparative basis by reference to specific qualities which are relevant to Chambers' selection criteria.

Chambers are reminded that reasonable adjustments may need to be made for disabled candidates at the application stage of the recruitment process when, for example, application forms may have to be provided in a particular format.

#### Selection Criteria

- 1.4 Candidates for pupillage or tenancy should be selected using selection criteria. Selection criteria should be objective and should relate to the work to be done.
- selection criteria enable Chambers to focus on the qualities which they require from the successful candidate.
  - they reduce the opportunity for decisions to be influenced by stereotyping or unwitting prejudice.
  - selection criteria may be designed so that a higher score is attributed to criteria to which greater importance is attached.
  - Chambers should avoid criteria that are subjective, such as personality-based attributes or behavioural attributes that cannot fairly be tested at interview.
  - it is good practice to provide candidates with selection criteria in advance of the interview.

They promote a consistent and objective approach to candidates by selectors.

#### Short Listing

- 1.5 Short listing should be carried out by more than one person and by reference to relevant selection criteria which should be determined in advance of the recruitment process. It is

good practice to draft a job or post description and a person specification to assist in identifying the relevant criteria and enable application forms to be drafted in a way which allows candidates to address the criteria. Where shortlisters cannot agree, it may be necessary for a committee to moderate short-listing decisions.

### Selection Committees

- 1.6 All recruitment decisions Chambers make, except for sole practices, should be made by a number of selectors, except in sole practices. Selection committees should, so far as possible, include persons of different age, gender and social, racial or cultural background. They should not include any relative or close friend of the candidates. No candidate should feel that he or she is so remote from the interviewing committee as to be denied a fair prospect of success.
- 1.7 Where final decisions as to recruitment are made by Chambers or designated members of Chambers rather than the selection committee, no single member of Chambers should be permitted to veto a decision and any challenge to a recommendation of the selection committee should be by reference to the selection criteria and on grounds which are substantiated.

### Training

- 1.8 Members of selection committees should be familiar with this Code and the applicable procedures and selection criteria. It is recommended that at least one member of each selection committee should be trained in fair selection methods.

### Interviews

- 1.9 Interviews should be planned in advance and structured so that each candidate may demonstrate his or her abilities and qualities by reference to each selection criterion. Chambers should ensure that any reasonable adjustment required for a disabled candidate has been made so that disabled candidates are not disadvantaged at interview.
- 1.10 Interviews should be of sufficient length to enable informed decisions to be made and to minimise the potential prejudices involved in "gut feeling".
- 1.11 It is not essential to ask each candidate identical questions, but a planned sequence of topics is recommended.
- 1.12 Irrelevant questions, such as personal questions in relation to family and personal background should be avoided. However, disabled candidates should be asked what, if any, adjustments may be needed to enable the candidate to practise as a barrister.
- 1.13 Selectors should score candidates individually on an agreed scale and should then compare scores with others on the panel so as to seek to reach a consensus. Scores should not be adjusted to reflect personal preference.
- 1.14 Standard exercises either in written form or by way of oral presentation may be a useful aid to arriving at objective assessments of candidates. In relation to pupils and starter tenants, such exercises should be designed in such a way that any area of law covered is one which should be equally familiar to all candidates. Alternatively, a topic may be chosen which requires no prior specialist legal knowledge but is designed to test analytical or advocacy skills.

### Record-Keeping

- 1.15 Candidates who have been rejected may want an explanation for their rejection. If good records are kept, reasons for rejection are generally easily explained in the event of a request



or even legal challenge. If explanations for rejection can be given, this should enhance confidence in the recruitment system.

#### Monitoring and Review

- 1.16 Candidates should be asked to complete monitoring forms so as to enable Chambers to review their performance by reference to reliable statistics. Monitoring enables Chambers to self-check. It may be that prejudices and attitudes of which selectors are not even conscious are influencing decisions. Monitoring enables these possibilities to be recognised and examined. Where there are significant discrepancies between proportions of applicants from a particular group and proportions of successful candidates from a particular group, recruitment practices may need to be reviewed with a view to redressing observed discrepancies and to achieving diversity in Chambers. If there are no such discrepancies, statistics may support the objectivity of a particular process in the event of a challenge.
- 1.17 All documents relating to exercises should be retained for two years and statistics should be prepared by reference to gender, race, disability and age of the number of persons applying, being short-listed and being recruited.

#### Recruitment of Pupils

- 1.18 This guidance is in addition to the matters set out at paragraphs 1.1 to 1.7 above.

#### Pupillage Policy

- 1.19 Chambers should have a pupillage policy which includes a pupillage selection procedure. The pupillage selection procedure should be made available to candidates for pupillage and should be reviewed regularly.

#### Advertising Pupillages

- 1.20 Pupillages must be advertised on a website designated by the Bar Council, save in the exceptional circumstances set out in paragraph 5 of the Pupillage Funding and Advertising Requirements 2003 in Annexe R to the Code of Conduct. Subject to those exceptions, all pupillages must be advertised including supplementary or late vacancies and vacancies for candidates who intend to practise outside the UK (see para. 404.2 (c) of the Code of Conduct).

#### Private Arrangements

- 1.21 Private arrangements to take pupils should not be made, save where the requirement to advertise is disapplied or waived pursuant to paragraph 5 of the Pupillage Funding and Advertising Requirements 2003 (see para. 1.20 above). Private arrangements are contrary to good equal opportunities practice and the Bar Council will not register pupillages by private arrangement. They breach the requirement in the Code of Conduct that pupillages must be advertised.

#### References

- 1.22 Where references are sought, a standard form should be used. Alternatively, referees should be directed as to the selection criteria being applied and the type of information which is sought from them.

## B. FAIR ACCESS TO WORK

### Allocation of Work in Chambers

- 1.36 The opportunities for barristers to develop a successful practice in their areas of interest are frequently affected by the range and quality of work on which they are instructed in the early stages of their careers and even in pupillage. Paragraph 404(2) of the Code of Conduct requires that Chambers take all reasonable steps to ensure that the affairs of Chambers are conducted in a manner which is fair and equitable for all barristers. This responsibility extends to the fair distribution of work amongst pupils and members of Chambers. Pupils and tenants are entitled to equality of opportunity in terms of being able to experience the full range of work and training undertaken by Chambers.
- 1.37 Pupils and junior tenants should be afforded the opportunity to develop their practices in a fair and equal manner. Discriminatory and stereotyped career assumptions may exist and procedures should be in place to ensure that patterns of instruction and briefing are transparent and open to scrutiny.
- 1.38 Chambers should have in place effective procedures for the monitoring of work allocation and for responding to (and rectifying where appropriate) complaints and concerns about work allocation. There should be procedures in place for ensuring the fair distribution of work, particularly un-named work and for providing support and guidance in respect of practice development and marketing.
- 1.39 The onus is on Chambers rather than on the individual pupil or barrister to ensure that there is fair access to work.
- 1.40 Chambers should ensure that its clerks use the clerks' room software to best advantage so that regular breakdowns of work are undertaken. Analysis should include the amount of work done, the type of work, fees earned and received and solicitors instructing. As a guideline, in respect of pupils and junior tenants, breakdowns should be produced at three monthly intervals. This information should be discussed with the pupil or junior tenant as part of their individual practice development, as well as being used to monitor Chambers' internal work distribution procedures and instructing solicitors' briefing practices.
- 1.41 One or more members of Chambers or appropriate practice manager should be responsible for overseeing the monitoring of work and should meet with the Senior Clerk on a regular basis in order to compare and review the work distribution data so as to ensure that work is distributed in a manner which is fair.
- 1.42 Chambers should be particularly aware of issues relating to the distribution of any un-named work coming into Chambers, and the redistribution of work between members of Chambers and pupils and junior tenants. These in particular should be systematically monitored to ensure that any disparities in allocation are identified and rectified.
- 1.43 Chambers should use the work distribution data to ascertain whether any instructing organisations or solicitors exhibit briefing practices which tend to favour a particular group. Any such trend should be considered by a designated member or members of Chambers to see if there is any underlying discriminatory practice.
- 1.44 If briefing practices are identified which disadvantage a particular group (for example allocating sex and child abuse cases predominantly to female practitioners) these should be addressed through the clerks' room. If the issue cannot be resolved through the clerks' room, it may need to be addressed by the Head of Chambers and the solicitor(s) involved.
- 1.45 Any unequal or unfair treatment of pupils and members of Chambers in the allocation of work should be treated as a serious matter and dealt with appropriately so that it does not recur.
- 1.46 Chambers should ensure that all clerks are fully briefed on the need to distribute work in a fair and non-discriminatory manner and to monitor work allocation. Clerks, and in particular those

involved in the distribution and monitoring of work allocation, should be provided with equality and diversity training.

- 1.47 Chambers should seek to ensure, where possible, that instructions and briefs are not delivered by solicitors at such times as to preclude those with childcare and other dependent care commitments from being eligible for that work (for example, where a brief is not delivered until Friday afternoon for a trial on Monday). Late delivery of briefs may also disadvantage disabled barristers who may require the Court to make adjustments for them which cannot be made on the morning of a trial or hearing. Any solicitor who insists on a directly discriminatory allocation of work should be reported to his or her professional disciplinary body. The work should be refused.

#### Practice Development

- 1.48 Chambers should arrange regular feedback sessions for working pupils and practice development meetings for tenants. The purpose of these meetings is to enable discussion of the allocation of work, work opportunity and development of individual practices.
- 1.49 Chambers are encouraged to set up mentoring schemes whereby a junior tenant may be a pupil's "mentor" and a junior tenant may be linked to a more senior member of Chambers who can offer advice and guidance regarding practice development in a mentoring role. This will be relevant also to barristers returning to practice following a career break.

#### Marketing of Barristers and Pupils

- 1.50 Marketing strategies for tenants and pupils should take into account equal opportunities considerations. For example, socialising after work in the pub may provide an effective means of "networking" for those who do not have childcare commitments or substantial student debts or both. Socialising in the pub may exclude pupils and junior tenants whose religious beliefs preclude the drinking of alcohol. Chambers should be sensitive to these issues and should ensure that marketing and networking activities are organised so that all pupils and tenants can, so far as practicable, be equally involved.
- 1.51 Chambers should encourage pupils and junior tenants to take part in Chambers' seminars and lectures, attend outside seminars and lectures, write or contribute to articles in professional publications, become involved in professional organisations connected to their line of work and become involved with any legal advice or support centres or organisations.
- 1.52 The organisation of regular "Practice Group Meetings" within Chambers is encouraged as a means of discussing individual and Chambers' issues and as a means of integrating pupils and members of Chambers.

### **E. HARASSMENT**

#### What is Harassment?

- 1.69 Harassment is any form of unwanted conduct which has the aim or effect of diminishing a person's dignity or creating a humiliating or offensive environment for that person. The fact that one person may be able to ignore or deal comfortably with certain behaviour does not mean that it is acceptable if directed at another. A single incident may constitute harassment if it is sufficiently serious. The motive or intention of the perpetrator is normally irrelevant (see para. 2.18 in relation to harassment which also constitutes unlawful discrimination).
- 1.70 There is now a criminal offence of intentional harassment. It covers harassment on any ground. The Act defines harassment as the use of "threatening, abusive or insulting words or behaviour; or disorderly behaviour" or displays of writing, signs or other visible representation which is threatening, abusive or insulting, and includes harassment at the workplace. Harassment amounting to physical or sexual assault is also a serious criminal offence and victims should be encouraged to report it to the police.

## Policy

- 1.71 All Chambers should have a harassment policy, which sets out a clear summary of the type of behaviour which is unacceptable in the working environment and the procedures for dealing with complaints about such behaviour. The policy should apply to all members and employees of Chambers, squatters and pupils and personal copies should be provided.
- 1.72 Complaints of harassment are sensitive and Chambers should adopt policies which enable them to react quickly and appropriately if a complaint is raised. It becomes much more difficult to deal with complaints effectively where there is delay.

## Guidance

- 1.73 Harassment causes distress. It can lead to impaired work performance, sickness, and even to recipients leaving Chambers altogether. Many recipients of harassment are afraid to complain. They fear that their complaint will be trivialised or that they will be subject to ridicule or reprisals or that nothing will be done.
- 1.74 Examples of behaviour which may amount to harassment based on sex, race, disability, religion or sexual orientation include:
- physical assault, including sexual assault;
  - demands for sexual favours in return for career advancement;
  - unnecessary physical contact;
  - exclusion from social networks and activities;
  - isolation;
  - bullying;
  - compromising suggestions or invitations;
  - suggestive remarks or looks;
  - display of offensive materials, including on computer screen;
  - tasteless jokes or verbal abuse;
  - offensive remarks or ridicule;
  - dealing inappropriately with complaints of harassment.
- 1.75 By undertaking certain specific steps, Chambers should be able to alleviate the problems of harassment in the context of work related relationships. In particular, the following is recommended:
- a policy statement which makes it clear that harassment will not be tolerated or condoned and that employees, members of Chambers, pupils and others temporarily in chambers such as mini – pupils have a right to complain if it occurs;
  - effective communication of the policy to all those to whom it applies;
  - active promotion of the policy by people in managerial positions;
  - training for those in managerial and supervisory roles on how to keep the working environment free of harassment and how to deal with it should it occur;
  - the provision of informal means of resolving harassment in the first instance;
  - the designation of an adviser to assist employees and others subjected to harassment;
  - a formal complaints procedure, which should be monitored and reviewed;
  - an independent, objective, sensitive and fair procedure for internal investigations of complaints; and
  - a principle of treating violations of the harassment policy as a disciplinary offence.

- 1.76 Often victims of harassment just want the harassment to stop and do not wish to see the harasser disciplined. There are various informal methods by which Chambers can deal with complaints of harassment, including:
- telling the harasser that their behaviour is unacceptable and asking them to stop immediately (if the recipient feels able to challenge the harasser directly or indirectly in this way);
  - seeking the help and advice of the Inns' Education Officers where the harassment occurs in an Inn of Court or at an Inn's sponsored event;
  - seeking the help and advice of the Bar Council's Equality and Diversity Advisers directly or by calling the confidential telephone number 020 7611 1310
  - seeking the help and advice of pupil supervisors or other members of Chambers.

#### Formal Resolution Options

- 1.77 Where informal methods fail to resolve the issue, or where the harassment complained of is of a more serious nature to begin with, one or more of the following formal methods of resolution may be appropriate:
- the initiation of Chambers' formal complaints or grievance procedure;
  - contacting the relevant Inn to make a formal complaint where the complaint concerns a sponsor or pupil supervisor or something occurring at an Inn sponsored event;
  - a complaint to the Professional Conduct Committee which has in place a special protocol for dealing with complaints of harassment;
  - initiation of the Bar Council's mediation procedure in confidence through the Bar Council's EDAs. The Mediation Panel is made up of individual members of the Bar who have received training in harassment mediation. The role of the panel is to advise the complainant and, with his or her permission, to mediate between the parties, without necessarily finding fault or blame and without the imposition of sanctions in extreme cases, the complainant might consider whether a complaint should be made to the police where the act complained of amounts to a criminal offence or whether a complaint of unlawful discrimination might be brought in a County Court or employment tribunal.

## F. COMPLAINTS AND GRIEVANCES

### Complaints Handled Internally

- 1.78 The Bar Council recommends that all Chambers should have a written grievance procedure and that this should include procedures for handling complaints of discrimination and harassment. The procedure should be brought to the attention of every pupil, tenant and Chambers' employee.
- 1.79 It is important for a person who has a complaint about discrimination, particularly where harassment is alleged, to have access to someone who can give them sympathetic advice and, if necessary, counselling. This should take place in an atmosphere of total confidentiality.
- 1.80 Complaints and grievances should be dealt with promptly, objectively and fairly.
- 1.81 In order to assist in the effective resolution of grievances within Chambers it is recommended that, in addition to the formal procedure, Chambers should nominate one or two members of Chambers to act as informal advisers to potential complainants, and to assist, when asked, in the informal resolution of grievances.
- 1.82 Barristers who have paid their voluntary subscriptions and their clerks may also approach the Bar Council Arbitration and Conciliation Service to resolve disputes between barristers themselves and between barristers and their clerks.

- 1.83 Chambers' employees are able to raise complaints through the new statutory grievance procedures which, together with statutory dismissal and disciplinary procedures, are an implied term of all contracts of employment in all Chambers regardless of size or number of employees.
- 1.84 When a complaint is made, in the interests of all concerned, confidentiality should be maintained throughout any investigatory process as far as possible and as appropriate in the circumstances. Names of complainants must not be released (save to those conducting the investigation and to the person complained against) without their consent

#### Formal Procedures

- 1.85 Formal grievance procedures should include:
- the allocation of responsibility for investigating complaints to at least two members of Chambers, including one senior member, each of whom should be familiar with the Code of Conduct and the Equality and Diversity Code for the Bar. In the event of a conflict of interest, provision should be made for the involvement of additional members of Chambers, or other nominated persons;
  - names of Chambers' informal advisers;
  - an undertaking that complainants will not be victimised or suffer detriment because of a complaint made in good faith;
  - an undertaking that all procedures will, as far as practicable, be confidential;
  - a requirement for the complaint to be made in writing;
  - a time limit within which a written response should be delivered;
  - the range of remedial actions where complaints are substantiated;
  - identification of the relevant Bar Council Committees and external bodies to which complaints may be addressed;
  - an indication of opportunities for support and counselling provided by the associations and groups for women lawyers, members of minority ethnic groups, disabled people, lesbians or gay men, the Pupil Barristers' Group or the Mature Entrants' Group. Confidential assistance may also be sought from the Equal Opportunities Officers at the Bar Council.

#### Complaints of Unfair Work Allocation

- 1.86 By establishing regular monitoring and reviews of allocation of work, Chambers should reduce the need for formal complaints by providing a regular opportunity to identify and remedy problems. Where there is a complaint about the distribution of work from a pupil or tenant, the complaints procedure set out above should apply. A set period during which more detailed monitoring of the distribution of work will take place, may be included as a step in the investigation of the complaint.

#### Complaints of Harassment

- 1.87 See paragraphs 1.73 to 1.77 above.

#### Remedies

- 1.88 Where, following investigation of a complaint, actual or potential discrimination has been identified, remedial action should be taken immediately. This may include all or some of the following:
- a re-evaluation of the applications and/or another interview with another panel (e.g. for a complaint from an unsuccessful applicant for pupillage, tenancy or a job);
  - a change of practice (e.g. in relation to unfair work allocation);

- implementation of a reasonable adjustment (in relation to a complaint from a disabled person);
- further advice, briefing or training for the members of selection panels, Chambers clerks and staff;
- advice and support to ensure that the complainant is not victimised as a consequence of making a complaint in good faith;
- disciplinary action.

1.89 A report on all complaints, and on the findings of the investigations, should be made to the Head of Chambers. Chambers should maintain confidential records of all complaints and records of meetings. These should be reviewed annually to ensure that the procedures are working effectively.

1.90 Chambers may be required to explain how they investigated any complaint that is taken to the Bar Council or other external body. An analysis of any complaints received will also be useful in identifying problem areas, training needs or scope for further action when Chambers review their procedures.

#### Complaints Made to External Bodies

1.91 Any individual (member of Chambers, pupil, employee or client) may complain about the conduct of an individual barrister to the Professional Conduct and Complaints Committee of the Bar Council<sup>11</sup>, or to the Inn about a pupil supervisor.

1.92 Where an individual has a statutory complaint of unlawful discrimination, the complaint may be pursued through the employment tribunals or County Court as appropriate.

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<sup>11</sup> Now the Complaints Committee of the BSB.

## Appendix F - Summary of Key Regulations and Standards for Approved Training Organisations

### **PART A Regulations (BTRs, Code of Conduct, Equality & Diversity Code)**

1. To be approved as a Training Organisation, there must be one or more registered pupil supervisors available to provide pupillage training practise in the organisation (BTR 37a)
2. The organisation must make proper arrangements for dealing with pupils and pupillage in accordance with the Code of Conduct. (BTR 37b)
3. Any period of pupillage must provide training which is adequate and which complies with such criteria as may be published by the Board. (BTR 33)
4. A fair and open advertising and recruitment process must take place and all vacancies for pupillages must be advertised on the website (www.pupillages.com), which also incorporates the 'Pupillage Portal' for online applications (Code of Conduct Annex R)
5. All pupillages are subject to compulsory funding (Annex R, Code of Conduct)
6. ATOs must comply with employment law, the Disability Discrimination Act, Race Relations (Amendment) Act, Sex Discrimination Act, Equal Pay Acts, the Human Rights Act and other equal opportunity legislation that may be enacted in the future.
7. Adherence to the Equality and Diversity Code for the Bar in terms of fairness and equality of opportunity must be demonstrable, and steps must be taken to ensure that proper arrangements are made for dealing with Equality and Diversity issues (para 404.2d) in recruitment (Direct or indirect discrimination is prohibited by the Code of Conduct (305.1))

### **PART B BSB required standards and criteria (in accordance with BTR 33)**

#### **1 Aims, philosophy and ethos of Pupillage**

1. The aims, philosophy and ethos of Pupillage, its professional and educational values must be embraced by the ATO
2. Arrangements must be in place in the ATO for dealing with pupils according to the Code of Conduct
3. The organisation must undertake to provide training in accordance with guidance issued from time to time by the Bar Standards Board

#### **2 Supervision and supervisors**

1. As well as the ATO itself, supervisors must also be approved for each pupil to be supervised, on a regular basis, by a registered pupil supervisor
2. At least one pupil-supervisor per pupillage must be named, as well as at least one other barrister or solicitor practising from the office where the pupil will be based. Details must be provided.
3. At least one of the lawyers mentioned above must be entitled to exercise a right of audience before every court in relation to all proceedings and has been so entitled for at least three years
4. A Director of Pupil Training must be in place in the ATO, having overall responsibility for pupillage
5. The ATO must ensure adherence to the requirements and standards set for pupil supervisors (See BTRs Schedule C and standards for pupil supervisors).
6. In accordance with BTR 37, all ATOs must ensure that a pupil obtains: adequate supervision, adequate resources to enable the timely completion of pupillage, and an understanding and appreciation of the operation in practice of the rules of conduct and etiquette at the Bar

#### **3 Recruitment and selection of pupils**

1. Details of selection procedures must be specified (e.g. in the Pupillage Policy Document) demonstrating adherence to BSB requirements
2. Selection must be made on a collective basis (not on a decision by one individual)



3. At least one barrister involved in the selection process must be trained in non-discriminatory selection procedures
4. Offers must be made in writing
5. Members (or employers) in an ATO must pay each pupil a minimum of £10,000 pa pro-rata (i.e. no less than £8,333.33 at the end of each month of the non-practising six months)<sup>12</sup>
6. During the practising six, Members (or employers) in an ATO must ensure each practising pupil is paid no less than £5,000.
7. Advertisements (of any type) must include details of ATO, number of tenants, area(s) of work, method of application, dates and schedule
8. No offers may be made between 1 May and before 9.00 am on 31 July, and no offers may be made before 9.00 am on 31 July in an applicant's penultimate undergraduate year
9. All offers must remain open for at least 14 days
10. Once approval has been granted, any material change (e.g. change in location of chambers, change in resources, departure of supervisor) must be notified to the BSB.

#### **4 Training and assessment of pupils**

1. The proposed pupillage programme must satisfactorily cover the outcomes and specified standards and competencies to be attained by pupils
2. ATOs must ensure that pupils obtain sufficient practical experience of advocacy, conferences and negotiation, legal research and the preparation of drafts and opinions, in order to prepare and present a case competently
3. Pupils must be able to access and be free to attend the compulsory courses and special training days provided by Inns, Circuits, ATC etc and other activity that forms an intrinsic part of the training programme
4. Preparation time must be permitted (at least one full day) prior to attendance at advocacy training courses
5. The roles and duties of pupils must be made clear, demonstrating adherence to BSB requirements and guidance
6. Procedures for providing pupils with an objective assessment of their progress at regular intervals during pupillage must be made clear
7. Pupils must have access to feedback and analysis of their attainment (or otherwise) of outcomes, and results of assessments
8. Final assessment/sign off must be by more than one person (see Appendix J)
9. Adequate resources must be provided to enable pupils to attain the specified competencies (such as adequate workspace, access to internet, email and telephone facilities, Library and research facilities)

#### **5 Support and development of pupils**

1. A comprehensive induction must be provided to pupils
2. There must be a fair method for distributing work amongst working pupils
3. Funding/salary arrangements must be made clear to pupils (including details of any guaranteed earnings or loan schemes)
4. Payment must be made for travelling expenses and compulsory courses, as may be necessary to reimburse expenses reasonably incurred by the pupil for travel and attendance at compulsory training courses.
5. ATOs must have an Equality and Diversity policy, which must be implemented in relation to all aspects of the ATOs operation (i.e. not only recruitment, as above), to ensure that training is delivered in an environment that is free from any forms of discrimination or harassment
6. Chambers/organisations must have detailed complaints and grievance procedures, and make these known to pupils. Complaints and grievances must be dealt with locally if possible before referring to the BSB

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<sup>12</sup> This will rise to £12,000 once the proposal, which requires a change to the Code of Conduct, is formally accepted by the LSB.

## **PART C      Good Practice**

### **1      Aims, philosophy and ethos of Pupillage**

1. The aims, philosophy and ethos of Pupillage, its professional and educational values should be evidenced in the ATO documentation
2. Details of the number and type of pupillages on offer should be specified
3. ATOs should have a formal pupillage policy document, demonstrating how standards for ATOs, supervisors and pupils are to be met in that ATO. It should be made widely available to all members of the ATO involved in pupillage, and to the BSB on request
4. The documentation (e.g. Pupillage policy document) should also include details of checklists etc to be used

### **2      Supervision and supervisors**

1. The roles and duties of pupil supervisors, should be specified in the Pupillage Policy document, demonstrating adherence to BSB requirements and guidance
2. It is good practice for there to be at least two registered pupil supervisors on site and accessible to pupil(s)
3. Other barristers or solicitors with at least three years' experience of practice should be listed, together with Inn and Date of Call and dates from which entitled to exercise full higher court rights of audience
4. Each pupil should have regular contact with at least one other solicitor or barrister with at least three years' experience of practice, in addition to the pupil supervisor

### **3      Recruitment and selection of pupils**

1. Criteria (negative and positive), which ATOs apply in deciding which applicants to shortlist for interview should be stated
2. Shortlisting should be carried out by more than one person, by reference to selection criteria determined in advance
3. All those involved in selection should be trained in non-discriminatory selection procedures if possible
4. Merit-based selection procedures involving written or oral work should be used if possible (in addition to interview processes)
5. Interviews should not take place when applicants are involved in examinations. If so, a request for an alternative date should be treated sympathetically
6. Applicants should be informed when a decision is likely to be made
7. Where pupillage is in the Employed Bar, then a fair and open advertising process should take place, even if it occurs at an earlier stage of appointment to an organisation or department (i.e. where a waiver from advertising is sought).
8. Additional publicising of pupillages by word of mouth, and/or encouraging applicants is not prohibited
9. Some chambers and most employed bar organisations with salaried employees will pay more than the minimum funding which is not prohibited
10. The amount of fees that the pupil may receive during from practice as a barrister in the practising (second) six may be set against the minimum sum
11. Use of the Pupillage Portal online application system is not compulsory but its usage is regarded as good practice
12. All ATOs are urged to recruit pupils through the online system (Pupillage Portal). Where an ATO decides that it does not wish to use the online system, it should avoid any action which, directly or indirectly, may undermine or be seen to undermine, the Pupillage Portal system
13. Details of the application process, timing and vacancies for those chambers that do not process their vacancies through Pupillage Portal are based on the premise that chambers that do not use the online system should avoid any action which may undermine the Pupillage Portal system. For example, offers may not be made 1 May – 31 July when the online system is open, and recruiting outside the Pupillage Portal timetable is not acceptable

#### **4 Training and assessment of pupils**

1. It is good practice to provide a comprehensive induction covering general issues, colleagues, general behaviours, work opportunities, HR and financial matters, working environment, holidays, sick leave, hours of work, use of equipment, policies etc as outlined in the Handbook section 14.2
2. For examples of good practice in areas to be covered in the programme of training see section on standards for supervisors (Appendix G) and information on standards and competencies to be attained by pupils (see Appendix H and J)

#### **5 Support and development of pupils**

1. It is good practice for there to be an appraisal system in place, as well as formal assessment
2. Additional resources can be provided such as provision of pupil's own dedicated workspace in own room or shared with supervisor or others, provision of pupil's own networked PC, and/or laptop, provision of own telephone line, provision of photocopying, fax and postal facilities
3. Access to chambers or institutional specialist library with Law reports etc and access to online materials is helpful
4. Provision of some basic secretarial and administrative support is helpful, where appropriate
5. The general policy as to recruitment of tenants/employed barristers should be made clear to pupils/prospective applicants
6. It is good practice for ATOs to allocate work in a fair and proportionate way
7. Working patterns and intensity of work should be appropriate for learning/practice (neither too light nor too heavy)
8. It is good practice for opportunities for pro bono work to be notified and encouraged
9. Pupils should be advised on insurance and taxation issues etc as appropriate
10. Where there may be cash flow issues (for example in the second six where expenses have to be paid, well before fees are received) then loans should be made to pupils
11. It is good practice for all members of an ATO to undergo equality and diversity training
12. It is good practice for reasonable adjustment to be made to working conditions where possible if needed by a pupil (e.g. level access, large fonts etc)
13. Routine activities of no educational value should not be required of pupils, since they are likely to present an obstacle to the acquisition of the skills required
14. Pupils should have informal (as well as formal) means of feeding back in confidence their concerns and views about their pupillage to an appropriate member of ATO
15. Support should be provided to pupils pursuing a grievance/complaint. In the Employed Bar, HR departments may advise
16. It is good practice for careers advice and guidance to be provided to pupils
17. Advice may be provided to those not taken on as tenants/employed barristers

#### **6 Management and Quality Assurance**

1. ATOs should have effective management systems in place, appropriate to the size and nature of the organisation
2. It is good practice for ATOs to have their own quality assurance systems in place – to a greater or lesser extent, such as data collection, monitoring of own performance, compliance checking, seeking feedback (peer, client, pupil etc)
3. There should be processes for identifying, supporting and managing pupils whose conduct, health, progress or performance is giving rise to concern.

## Appendix G - Summary of Key Regulations and Standards for Supervisors

### **PART A Regulations (BTRs, Code of Conduct, Equality & Diversity Code)**

1. Any period of pupillage must provide training which is adequate and which complies with such criteria as may be published by the Board. (BTR 33)
2. Schedule C to these Regulations [BTRs] sets out rules applicable to pupil supervisors. (BTR 35)
3. A barrister may act as a pupil supervisor if the barrister: is on the register of approved pupil supervisors kept by the Board; has a current practising certificate; and has regularly practised as a barrister during the previous two years. (BTR Schedule C, 1)
4. The Board may enter a barrister on the register of approved pupil supervisors if the barrister is approved by an Inn of which the barrister is a member. (BTR Schedule C 2)
5. To have the necessary experience to act as a pupil supervisor a barrister should normally: have practised in the United Kingdom or another Member State as a barrister or as a member of another Authorised Body for a period of at least six years in the previous eight years; (BTR Schedule C 4a) and for the previous two years have regularly practised as a barrister and been entitled to exercise a right of audience before every court in England and Wales in relation to all proceedings. (BTR Schedule C 4b)
6. The Board, in consultation with the Inns, will normally require pupil supervisors to undertake initial training before they may be entered on the register of approved pupil supervisors. (BTR Schedule C 6)
7. A pupil supervisor must when responsible for supervising any pupil: take all reasonable steps to provide the pupil with adequate tuition, supervision and experience; have regard to any pupillage guidelines issued by the Board and to the Equality Code for the Bar; and ensure that the pupil prepares for and attends any further training required by the Board such as advocacy training provided by the pupil's Circuit or Inn. (BTR Schedule C 9)
8. A pupil supervisor may not be responsible for supervising more than one pupil at a time except with the approval in writing of the Board. (BTR Schedule C 10)

### **PART B BSB required standards and criteria (in accordance with BTR 33)**

#### **1 Aims and philosophy of Pupillage**

1. The aims, philosophy and ethos of Pupillage, its professional and educational values must be embraced by supervisors
2. Supervisors must undertake to provide training in accordance with additional guidance issued from time to time by the Bar Standards Board (see Pupillage Handbook)

#### **2. Eligibility as pupil supervisor**

1. Supervisors must have fulfilled all requirements specified in the BTRs for supervisors
2. The formal process of application for registration/accreditation as supervisor must be undertaken through his/her Inn and with the BSB, supported in his/her application by an appropriate independent person
3. Supervisors must be entered on the register of approved pupil supervisors maintained by the Bar Standards Board
4. Supervisors must have been accredited within five years previously (or have undergone retraining)
5. 'Refresher' training must be undertaken if he/she has not supervised for 3 years
6. Once registered with the BSB, a pupil supervisor may take a pupil if his/her chambers or employer is registered as an Approved Training Organisation.

#### **3 Supervision**

1. Supervisors must carry out roles and responsibilities as supervisor as specified in the Pupillage Handbook (section 4.6).

2. Supervisors must have knowledge and understanding of the Equality & Diversity Code for the Bar (in its latest form) and be able to apply it as a supervisor
3. Supervisors must understand developments relevant to the context of pupillage training, such as issues affecting training due to the 2007 Legal Services Act, the operation of the Legal Services Board (LSB), the operation of the BSB, and the effect of legislation such as the DDA and the EWTD
4. Supervisors must be familiar with and understand professional values set out in documents such as the Code of Conduct
5. Pupil supervisors must therefore
  - a. Provide/organise induction for pupils (in conjunction with the ATO)
  - b. Establish and maintain regular contact with the pupil, ensuring his/her accessibility when advice is needed
  - c. Ensure resources are in place (in conjunction with the ATO)
  - d. Provide learning opportunities for the pupil
  - e. Provide timely, effective and constructive guidance, advice and feedback on the pupil's work
  - f. Ensure outcomes of core areas are met and competencies attained to the required standard
  - g. Act as assessor of pupils' work
  - h. Instil professional ethics and conduct, ensuring that the pupil is aware of the need to exercise probity and conduct him/herself according to ethical principles (and of the implications of misconduct)
  - i. Ensure that compulsory courses are undertaken and passed
  - j. Ensure pupil is initially registered, and signed off after first six to obtain a practising certificate and ultimately on successful completion of second six to be signed off as worthy of a full practising certificate
  - k. Ensure pupil is covered through his/her own insurance when providing legal advice
  - l. Comply with any other rules or guidelines relating to pupillage issued by the Bar Standards Board

#### **4 Assessment**

1. Supervisors must be fully aware of their equally important role to act as 'assessor' as well as 'supervisor' of pupils
2. Supervisors must understand and be able to put into practice the process of assessment and have the ability to use formative assessment and feedback for the benefit of the pupil
3. Supervisors must provide appropriate feedback, and formal assessment of pupils
4. Supervisors must have up to date knowledge of the core competencies and relevant specialist curriculum, remaining aware of changes and developments in relevant legal practice

### **PART C Good Practice**

#### **1 Aims, philosophy and ethos of Pupillage**

1. Pupil supervisors should ensure that the client's interests are at the heart of his/her professional practice
2. Supervisors should be aware of equal opportunities standards and legislation (such as the DDA and the EWTD), promoting equality and valuing diversity and be able to apply them as a supervisor

#### **2. Suitability as pupil supervisor**

1. Supervisors should be able to devote sufficient time to the role
2. They should possess enthusiasm and a personal commitment to supervising his/her pupil
3. Supervisors should be sensitive and responsive to the needs of his/her pupil
4. Supervisors should be willing to develop individually as practitioner and supervisor
5. Supervisors should be aware of the need for and operation of quality assurance and enhancement processes for professional practice

6. Acting as mentor/advisor/counsellor to pupils (as well as supervisor) is regarded as good practice for supervisors
7. Supervisors should support the pupil also in non-professional/academic areas, e.g. where some counselling might be needed (or ensure that such support is available)
8. Supervisors should deal with any other issues arising (e.g. conduct, complaints, special circumstances)
9. Supervisors should assist in placing the pupil if he/she is unable to continue supervision for any reason
10. Supervisors should ensure that the pupil is aware of other sources of advice (e.g. Inns, BSB), including careers guidance, health and safety and equal opportunities policy

### **3 Supervision**

1. Supervisors should have understanding of the learning experience, be able to assess learning needs of pupils and hence identify their own teaching/supervisory objectives
2. Supervisors should be competent to conduct one-to-one review and feedback sessions
3. Supervisors should be able to use appropriate technology
4. The necessary supervisory expertise should be maintained, including the appropriate skills, to perform all of the role satisfactorily, supported by relevant continuing professional development opportunities

### **4 Assessment**

1. Supervisors should understand and be able to put into practice the process of assessment and have the ability to use formative assessment and feedback for the benefit of the pupil
2. Supervisors should Ensure outcomes of selected/optional specialist areas are met
3. Supervisors should Perform appraisal of pupils (in addition to feedback) as appropriate in order to monitor the pupil's overall progress.

## Appendix H - Summary of Key Regulations, Standards and Competencies for Pupils

### PART A Regulations (BTRs)

1. To become qualified to practise as a barrister a person must: be called to the Bar by an Inn; complete (or be exempted from) the Professional Stage of training; and satisfy such further requirements as are set out in the Code of Conduct. (BTR 3)
2. The Board shall publish from time to time a general statement of the minimum level of competence reasonably to be expected of a barrister when first qualified to practise. (BTR3C)
3. The Professional Stage (pupillage) is completed by **satisfactorily** completing 12 months of pupillage and such further training as may be required by the Board (BTR 27a); and being issued with a Full Qualification Certificate (BTR27b).
4. Before commencing the Professional Stage, a person must have completed (or been exempted from) the Vocational Stage (BTR28)
5. A person may not commence the Professional Stage more than five years after completing the Vocational Stage except with the permission of the Board (BTR 29)
6. Pupillage is divided into two parts: a non-practising period of six months; and a practising period of six months (BTR 30)
7. Any period of pupillage must provide training which is adequate and which complies with such criteria as may be published by the Board (BTR 33)
8. Any period of pupillage must be undertaken in an Approved Training Organisation and with a barrister who is a registered pupil supervisor. (BTR 34)
9. During any period of pupillage the pupil must be diligent in receiving the instruction given and observe all legal and professional obligations of confidence. (BTR 36)
10. Before commencing any period of pupillage (including any period of external training) a person must apply to the Board for registration of the pupillage by submitting an application in the form prescribed by the Board (BTR 43)
11. If any of the information provided in an application for registration of a pupillage changes before the pupillage has been completed, the pupil must promptly notify the Board in writing of the change. (BTR 48)
12. On completion of the non-practising period of pupillage, the Board will issue the pupil with a Provisional Qualification Certificate [with various provisos] (BTR 49)
13. On completion of the practising period of pupillage, the Board will issue the pupil with a Full Qualification Certificate if the pupil has a Provisional Qualification Certificate and the pupil has satisfactorily completed the practising period of pupillage and any further training required under Regulation 27(a); and that the pupillage is registered and complied with these Regulations. (BTR 49)
14. For the purpose of these Regulations, a pupil is to be treated as having satisfactorily completed a period of pupillage if the pupil has been diligent in receiving the instruction given and has achieved the minimum level of competence required of a pupil at the end of the relevant period. (BTR 51)
15. The Board may accept as evidence that a pupil has satisfactorily completed any period of pupillage a certificate to this effect from the pupil supervisor with whom the pupil has completed that period. (BTR 52)

## **PART B      BSB required standards and competencies (in accordance with BTRs 3C, 29, 51, 52)**

*In order 'satisfactorily' to complete the Pupillage Stage of training (BTRs 29, 51, 52) pupils must demonstrate and be assessed as having attained the required standards and competencies as described in Chapter 8 and specified below. Checklists (see Chapter 10 and Appendix I) must be used in order to ensure that a range of tasks has been covered and in order to make it possible for competencies to be demonstrated, but it is the level of competence that should be assessed, not simply the number and range of tasks done.*

For a pupil to have satisfactorily completed the first six, in order to be issued with a Full Qualification Certificate (rendering him/her eligible to apply for a full practising certificate time for that calendar year if notified to Records and working in the right environment), a pupil must:

### **1      Generic Standards**

#### **A      Basic competencies**

1. have the ability to demonstrate the qualities and skills necessary for future employment/practice at the Bar, with the ability to act autonomously in planning and implementing tasks
2. have integrity, learning ability, judgment and intellectual independence
3. demonstrate high level knowledge and skills - with imagination, originality or flair, based on proficiency in all the specified learning outcomes.
4. have the ability to utilise and develop their knowledge and understanding of the principles underpinning their professional practice
5. produce work that is very well researched and argued with almost no errors or omissions, which is of a standard on which a client could expect to rely
6. demonstrate high level awareness and understanding of the knowledge and skills required, such as the ability to identify and debate critical issues or problems, ability to solve non-routine problems, ability to adapt and apply ideas to new situations, and the ability to invent and evaluate new ideas.
7. meet competencies and standards as specified in relation to legal analysis, problem solving, management of data, sound judgment, organisational skills, decision making, learning quickly and independently, understanding the legal and ethical framework in which they work, negotiation, persuasive oral and written communication
8. have the ability to analyse evidence, apply the law to evidence, with an understanding of procedure
9. express thoughts clearly in writing; write fluently, clearly and concisely; use style and language that meets the needs of the audience/reader; organise written work well
10. have the ability to address a tribunal fluently, clearly and concisely
11. be able to work with and relate to lay and professional clients and colleagues
12. be skilled in electronic and hard copy research

#### **B      Critical analysis, reasoning and problem solving**

1. be able critically to evaluate arguments, assumptions, abstract concepts and data in order to deal with complex issues systematically, make sound judgments and demonstrate skill in identifying solutions and tackling and solving problems, clearly communicating their conclusions
2. accurately identify issues and, in getting to the root of a problem, put together logical arguments, grasp essential point, gather appropriate information, understand the need for a sound evidence base for giving advice and making decisions, and apply analysis in a practical way (identifying causal connections, linkages and interdependencies)
3. demonstrate self-direction, initiative, personal responsibility and decision making in complex situations, and high level independent learning abilities required to continue to advance their knowledge and develop new skills to a high level, appropriate to practise at the Bar
4. demonstrate high level awareness and understanding of the knowledge and skills required, such as the ability to identify and debate critical issues or problems, the ability to



solve non-routine problems, and the ability to adapt and apply ideas to new situations, and the ability to devise and evaluate new ideas.

### **C Decision making and Judgment**

1. demonstrate self-direction, initiative, personal responsibility and decision making in complex situations, and the necessary high level independent learning abilities required to undertake appropriate further professional training and development
2. discriminate clearly between the vital, the important and the trivial (weight and importance of issues); show a sense of proportion and of what is possible in practice; consider wider implications of recommendations; make appropriate decisions, inferences or deductions from the information presented, and have the self-confidence to take calculated risks

### **D Innovation and independent learning**

1. bring a fresh approach to a problem; develop innovative and creative solutions. Is able to see the bigger picture and sees relevant links to issues
2. demonstrate the ability to continue to advance their knowledge and develop new skills to a high level, appropriate to practise at the Bar
3. assimilate new areas of law quickly
4. be responsible for his/her own learning, acts appropriately on feedback provided by supervisor(s), act appropriately to assessment of his/her work and react appropriately to appraisal of his/her work
5. be able to manage and apply own future learning (CPD) of relevant topics and skills

## **2 Conduct and etiquette**

### **A Code of Conduct and fitness to practice**

1. have detailed working knowledge and understanding of the code of conduct and the written standards for the conduct of professional work.
2. demonstrate the skills and competencies as appropriate to holders of the practising certificate in terms of the Code of Conduct; apply the Code of Conduct to self
3. be deemed competent in terms of fitness to practise, by demonstrating that he/she is fit to do so in terms of the Code of Conduct, and able to represent clients and members of the public
4. recognise reputational risk in behaviour outside professional work/life and behave accordingly
5. have detailed knowledge and understanding of what action to take and what consequences may arise if a complaint is made or a barrister is asked to give a witness statement, provide evidence, or withdraw etc

### **B Ethics**

1. have knowledge and understanding of ethical values (including duty to the client and to the court)
2. have a systematic understanding of relevant knowledge and ethical principles in law and practice; together with a full understanding of techniques applicable to practice at the Bar of England and Wales
3. be honest and straightforward in professional dealings, including with the court and all parties
4. must demonstrate (and implement) an understanding of equality, diversity and cultural issues

**C Etiquette**

1. have a thorough understanding and appreciation of the operation in practice of the rules of conduct and etiquette at the Bar that are of fundamental importance to the profession
2. have detailed knowledge and understanding of all aspects of the cab rank rule in practice and/or (in the case of an employed barrister) understanding of the restrictions on the supply of legal services
3. have detailed knowledge and understanding of the duty to avoid conflicts of interest
4. have detailed knowledge and understanding the rules and practices relating to confidentiality and preserves the confidentiality of every client's affairs, including clients of the pupil supervisor and other barristers with whom work is undertaken

**D Knowledge**

1. demonstrate very high level knowledge, based on proficiency in all the learning outcomes, with a systematic understanding of relevant knowledge of law and practice, together with a comprehensive understanding of techniques applicable to practice at the Bar of England and Wales
2. have the ability to utilise and develop their knowledge and understanding of the principles underpinning their professional practice
3. have the skills and underpinning knowledge necessary to assess and manage cases without supervision – with demonstration of having put these into practice
4. keep his/her knowledge up to date
5. have conceptual understanding that enables him/her to collect and analyse relevant information; evaluate current developments and advanced theory in law and practice, and acquire in-depth knowledge of written material, law reports, journals and articles in applicable areas of study
6. have expertise in the application of legal knowledge in the interests of the client, together with a practical understanding of how established technical skills are used in relation to the interpretation of knowledge

**3 Advocacy skills<sup>13</sup>****A General**

1. have the skills necessary [as defined below] to be an effective advocate, able to deploy advocacy and related skills efficiently and effectively
2. demonstrate very high level knowledge and skills - with imagination, originality or flair, has the ability to be a very articulate advocate, both orally and in writing
3. be able to persuade and influence, keep to relevant issues and facts, and use an appropriate style, written and oral
4. have experience through observation or otherwise of trials and appeal proceedings in the higher courts
5. have practical experience of advocacy (in a training situation)
6. have the ability to bring together the skills of oral advocacy, legal research, fact management and written presentations in particular skeleton arguments (if necessary under pressure or at short notice)
7. have developed the skills of narrative (and appellate) advocacy, examination in Chief and cross examination

**B Performance and communication skills**

1. have demonstrated the ability to communicate detailed knowledge and concepts by means of a high level of performance and other skills.
2. have demonstrated very high level performance skills - with imagination, originality or flair, based on proficiency in all areas of the core and specialist curriculum

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<sup>13</sup> See Dutton criteria, Appendix M to this Handbook.

3. be able to express thoughts clearly when speaking; speak fluently; use style and language that meets the needs of the audience; command attention and inspire confidence; present a persuasive and compelling argument
4. be able to understand others' points and respond persuasively to counter-arguments during questioning. Justifies rationale for recommendations
5. use effective oral delivery, including audibility, pace, clarity of expression, use of appropriate language (language adapted to the tribunal, appropriate eye contact)
6. use effective oral inter-action with tribunal, dealing with opponent's arguments, anticipating points, dealing with court's questions/concerns (i.e. answering questions, not avoiding them; not being thrown by questions; having an honest, and coherent, approach), relating submissions to skeleton arguments, appropriate use of authorities and adapting to opponent's points.

### **C Structure and coherence**

1. be able to prepare, factually, legally and procedurally a case for hearing
2. be able to present Oral Submissions that are organised with clear aim (i.e. set out clearly what the judge is being asked to do and the source of the power to do it); coherence (structured, logical, with clarity of expression); and logical structure (beginning, middle and end and appropriate use of materials and appropriate use of authorities).

### **D Examination-in-Chief, cross examination and closing**

1. *for examination-in-chief*: use clear and logical structure (telling the story through the witness), focus on relevance (avoiding the irrelevant and eliciting substance whilst avoiding the irrelevant), avoid leading questions (except where appropriate e.g. facts not in dispute), deliver audibly, at correct pace, and with awareness of the tribunal, interact with the witness, audibly, with appropriate control of the witness (use of appropriate language, apt and focused questions - short, simple questions, one point at a time, listening to answers and with appropriate conduct towards the witness)
2. *in cross examination*: exhibit clarity of purpose, logical structure and organisation, identification of issues and clarity of expression, demonstrate knowledge of the facts and relevance, use closed and concise forms of questions and delivers audibly at appropriate pace (knowing when to stop)
3. *in putting the case/support for closing submission*: elicits necessary facts, makes challenges necessary to put the case and lays the factual foundation of the case.

### **E Court proceedings**

1. have detailed knowledge of Counsel's professional duties when conducting proceedings in court (according to the Code of Conduct)
2. observe responsibilities and duties when being led
3. have detailed knowledge and application of the proper modes of address in court and in chambers, the proper use and mode of citation of authorities in court, and proper conduct towards the court, clients, solicitors, witnesses, litigants and the media
4. Exercise proper conduct in relation to witnesses of all types

### **F Written advocacy**

1. Is able to apply the above appropriately in cases where advocacy is in written form

## **4 Conferences and negotiations**

### **A Preparation/general**

1. have gained understanding and experience of working in conferences and negotiations with sufficient exposure to the work undertaken by his/her pupil supervisor so as to be able to negotiate and to put issues in conference
2. be able to prepare effectively for conferences and negotiations

3. have relevant negotiating and influencing skills, namely listening; appropriate questioning; analysis of issues of law and fact in order to form framework for questioning
4. be able to demonstrate clear knowledge and understanding of the processes of conferencing and negotiating on behalf of a client

## **B Conference**

1. have the skills needed in conferencing (including potential difficulties and pitfalls that can arise and how to avoid them)
2. ensure careful preparation
3. be able to identify factual, legal and procedural issues
4. be able to explore the strengths and weaknesses of the case
5. be able competently to conduct a conference with a client
6. provide clear advice on merits and evidence
7. indicate future steps
8. arrange and make records of the conference and its conclusions
9. have knowledge and understanding of the conduct of conferences with: Solicitors and clients; Solicitors only; Counsel only
10. be aware of how to (and be able to) conduct a telephone conference

## **C Negotiation**

1. understand the skills needed to conduct negotiations in whatever field of practice on behalf of a client in the presence or absence of an instructing solicitor, to include how to deal with an opponent or an unrepresented litigant or defendant
2. have obtained (through experience and observation of negotiation) the skills needed in negotiation, including potential difficulties and pitfalls that can arise and how to avoid them)
3. identify the aims of a process of negotiation
4. obtain and act within instructions
5. be aware of the obligation of confidentiality
6. have awareness of legal professional privilege
7. be aware of the duty not to misrepresent evidence to an opponent
8. be able competently to negotiate on behalf of a client
9. have an understanding of the conduct of negotiations in particular dealing with an opponent; dealing with a client and advising on settlement; any special considerations that apply when conducting negotiations in the absence of the instructing solicitor.
10. have understanding of any special considerations which may arise in relation to negotiations with litigants in person.
11. be able to clarify and record any agreement reached or any failure to reach agreement

# **5 Drafting, paperwork and legal research**

## **A General**

1. have the ability and competence to undertake case analysis and research, in relation to opinion writing and drafting without supervision
2. be able to draft paperwork with clarity of purpose, logical structure and organisation, identification of issues, clarity of expression, appropriate length, appropriate documentary references to external materials, and appropriate references to authorities.
3. be practised in the preparation of paperwork necessary to support oral argument, in particular: chronologies; case summaries; skeleton arguments
4. have the necessary writing and drafting skills to provide a service to the client specifically in writing opinions, skeleton arguments, pleadings and other relevant paperwork
5. be able to produce effective, structured opinions and other pieces of written work such that a client might be able to rely on
6. be able to draft written work in appropriate language, with concise and accurate statements of fact
7. be able to produce appropriate paperwork in criminal matters

**B Drafting**

(Opinions, advices, letters, pleadings, witness statements, affidavits and orders)

1. possess the skills of preparing accurate and concise Opinions and other Advices, written in plain English, and with clarity of purpose, logical structure and organisation, identification of issues, clarity of expression, appropriate length, appropriate references to external material and authorities (Whitfield)
2. be able to identify relevant facts from the papers and identify sources as appropriate
3. identify and explanation of the relevant legal issues;
4. apply the relevant law to the relevant facts and the drawing of appropriate conclusions and giving of appropriate advice.
5. have the necessary skills for drafting letters written in accordance with pre-action protocols or similar, and for drafting Part 36 Offers or similar.
6. have the necessary skills for drafting pleadings, in particular the preparation of: Statements of Case, i.e. Particulars of Claim, Defence and Reply.
7. understand the requirements of the Code of Conduct in relation to pleading and in particular to allegations of fraud (paragraph 704).
8. understand the ethical considerations in drafting statements of fact for witnesses in civil actions (paragraph 704 and the Guidance on Preparation of Witness Statements dated 16 January 2001).
9. understand the ethical considerations concerning contact with witnesses and taking statements in relation to criminal cases
10. be aware of rules governing the allegation of fraud
11. be aware of the rules governing the taking of witness statements
12. be able to draft orders, including the use of the Tomlin form and other consent orders.
13. be able to perform/produce non litigation drafting, according to the type of work which will vary according to individual specialist areas as appropriate

**C Legal research**

1. be able to undertake legal research to solve real problems of drafting and opinion writing
2. be able to produce work that is very well researched and argued.
3. be able to locate and employ sources of information as relevant in order to produce effective paperwork (electronic and paper)
4. be able to deal with requests for and provision of further information.
5. correctly apply all relevant sources of information, effectively utilising information in opinion writing, pleading, drafting and case preparation.
6. demonstrate high level research skills on which a client would be able to rely
7. be able to locate and employ primary sources of information/legislation (case and statute law and citation indexes)
8. be able to locate and employ secondary sources of information/legislation, depending on areas of specialism (textbooks, digests, encyclopaedias and legal journals)
9. have knowledge and understanding of specific research tools/areas – e.g. where to find and how to use: Case Law, Statute Law, Citation indexes
10. be familiar with and able to use appropriate online resources/materials
11. be able correctly to research and cross reference all work, and make and retain a full and accurate note of work
12. be able to utilise overseas law relevant to anticipated practice

**6 Specialist areas of practice**

1. have an understanding of and have gained expertise in specialist work undertaken by his/her pupil supervisor (through sufficient exposure) in order to gain an understanding of work in a chosen specialist area of practice
2. have demonstrated the necessary skills and understanding to provide a service to clients in the specified specialist area in which he/she wishes to practice, in accordance with guidance provided in the Handbook and checklist(s) for that specialist area

## **7 Practice management**

### **A General**

1. have and exercise understanding of obligations in relation to practice management
2. understand the duty of ensuring that practice is competently administered

### **B Planning and management skills**

1. demonstrate the qualities and skills necessary for future employment at the Bar
2. act autonomously in planning and implementing tasks at a professional level at the appropriate level for practice at the Bar
3. be able to work under pressure to produce quality work to deadlines set by the court or agreed with clients

### **C Relationships with others and team working**

1. have detailed knowledge and understanding of the relationship between counsel and instructing solicitors; the courtesies conventionally extended to other members of the Bar; and the responsibilities and duties when being led
2. work collaboratively with others (professionals, clients etc) to solve problems
3. get on well with a diverse range of people; take account of the reactions and feelings of others
4. work well in a team; allow others to contribute and listens to what they say, work openly and honestly with others, act to build team spirit and reduce/resolve conflict, supports team goals and decisions.

### **D Motivation**

1. be self-starting; cope well under pressure; apply a high level of energy to well directed activity; take the initiative; persevere and see a task through; set goals for achievement; refuse to be deflected by difficulties and obstacles
2. be self-aware, extend and integrate strengths; recognise and overcome weaknesses; learn from experience; strive for improvement; adapt to a changing environment and new challenges; learn new skills and seek out new experiences.

## Appendix I – checklists for core areas

# BAR STANDARDS BOARD

REGULATING BARRISTERS

### Pupillage Checklist, 2010 -11 (First Six/Second Six)

<b>Name of Pupil</b>	
<b>Name of Pupil Supervisor</b>	
<b>Name and Address of Approved Training Organisation where pupillage was undertaken</b>	
<b>Dates of Pupillage</b>	

<b>Declaration by Pupil</b>	
I certify that I have completed the items set out in this checklist	
Signed: (Pupil)	Date:

<b>Declaration by Supervisor(s)</b>	
I have read the checklist and discussed its completion with the above pupil. I confirm that to the best of my knowledge and belief it has been completed accurately and satisfactorily in terms of the standards and competencies as defined in the Pupillage Handbook.	
Signed: (Pupil Supervisor)	Date:
Signed: (Head of Chambers)	Date:
Signed: (Director of Pupil Training)	Date:
Signed: (Additional Supervisor – for .....)	Date:
Signed: (Additional Supervisor – for .....)	Date:

**NB:** Copies of completed checklists must be sent to the Bar Standards Board on completion of pupillage together with the Certificate of Completion of the Practising Six months of pupillage

<p><b>Section 1 : Conduct and Etiquette</b></p> <p><i>A pupil should gain an understanding and appreciation of the operation in practice of rules of conduct and etiquette at the bar and achieve a working knowledge and understanding of the code of conduct and the written standards for the conduct of professional work. Many of these points may have been covered during the Bar Course or in the courses on Ethics run by the Inns of Court but issues of conduct and etiquette are of fundamental importance and require emphasis. Whenever a point of conduct or etiquette arises in practice the opportunity should be taken to consider the point with the pupil. For many of the following matters, a discussion between pupil and pupil supervisor will suffice.</i></p> <p><i>Pupil supervisors should initial and date the last column as indication that they consider the topic has been adequately addressed to the required standard.</i></p>	
<p><b>1. In the case of a barrister in self employed practice, understanding of all aspects of the cab rank rule in practice (Part V1)<sup>14</sup>, including:</b></p>	Satisfactory
<p>1.1 the duty not to withhold services save on proper grounds.  1.2 the duty not to take on work beyond competence or for which there is insufficient time and opportunity to prepare.  1.3 the duty not to take on work which may cause a conflict of interest to arise or which may jeopardise the confidentiality of information belonging to another client or former client</p>	
<p><b>2. In the case of an employed barrister, to understand the restrictions on the supply of legal services</b></p>	
<p>3. Understand the relationship between counsel and instructing solicitors, including:</p>	
<p>3.1 the importance of prompt response to instructions  3.2 the dividing line between decisions in the running of the case that (i) should and (ii) should not be made without first consulting the client and the instructing solicitor  3.3 duties in the event that two hearing dates clash  3.4 appropriate practice when attending at court in the absence of a solicitor or representative (<i>para. 706</i>)</p>	

<sup>14</sup> References to parts or paragraphs are to the Code of Conduct



4. Understanding the duty to avoid conflicts of interest including:	
<p>4.1 the overriding duty to the court; (<i>para. 302</i>)</p> <p>4.2 the duties to the lay client and professional client respectively; (<i>para. 303; 703</i>)</p> <p>4.3 duties when publicly funded; (<i>para. 304</i>)</p> <p>4.4 when conflicts arise or may arise between two lay clients for whom a barrister is acting or is instructed to act jointly; (<i>para. 603</i>)</p> <p>4.5 the several duties that may arise to the client, the court and to opponents if a pupil comes into possession of relevant information which he/she is instructed or requested not to disclose. (<i>para. 608</i>)</p> <p>4.6 the circumstances when it may, or will, be necessary to withdraw from a case. (<i>para. 608</i>)</p>	
5. Understanding the rules and practices relating to confidentiality ( <i>para. 702</i> ) including:	
<p>5.1 the status of clients' privileged communications</p> <p>5.2 duties in the event of obtaining confidential information belonging to other parties (<i>para. 608</i>)</p> <p>5.3 duty to the client in respect of any relevant information coming into the barrister's possession (whether or not confidentially).</p> <p>5.4 duty to ensure the preservation of client confidentiality including appropriate practice in relation to reading papers or conducting conversations in public places (<i>para. 702</i>)</p>	
6. Understanding the courtesies conventionally extended to other members of the Bar including those observed:	
<p>6.1 On receiving instruction in a matter in which other counsel has previously acted</p> <p>6.2 On strike-out, or wasted costs applications</p>	
7. Understanding the responsibilities and duties when being led including:	
<p>7.1 the likely division of responsibilities;</p> <p>7.2 the junior's paperwork tasks.</p>	

8 Understanding what action to take and what consequences may arise if:	
8.1 a complaint is made against a barrister 8.2 a barrister is asked to give a witness statement or provide evidence 8.3 a barrister is asked to withdraw from a case 8.4 a wasted costs order is sought against a barrister 8.5 a barrister is late for court or for a conference	
9. Understanding obligations in relation to practice management including:	
9.1 the duty to have a current practising certificate ( <i>para. 202</i> ) 9.2 the duty to keep or ensure that accurate practice records are kept ( <i>para.403</i> ) 9.3 the duty to comply with any continuing professional development requirements ( <i>para. 202</i> ) 9.4 the duty to be insured with BMIF against claims for professional negligence ( <i>para. 204</i> ) 9.5 the restrictions on advertising and publicity ( <i>para. 710</i> ).	
10. Understanding the duty of ensuring that practice is competently administered, and the importance of maintaining:	
10.1 completion of Practice Management Course 10.2 sufficient records to support and explain details of fees claimed 10.3 proper financial records 10.4 a proper record of hours worked and work done 10.5 completion of Forensic Accounting Course (must be completed during pupillage or by the end of the first three years of practice)	

Pupil's record of work done or work diary references

Signed (pupil):

Date:

Pupil Supervisor's comments

Signed (supervisor):

Date:

## Section 2: Advocacy

*A fundamental objective of pupillage is that the pupil should develop and practise the skills necessary to be an effective advocate. In addition to the basic techniques of oral advocacy, these skills include legal research, fact management and written presentations in particular skeleton arguments. The pupil must develop the ability to bring all these skills together (if necessary under pressure or at short notice) and be able to deploy them efficiently and effectively.*

*The development of Advocacy skills will depend, to a significant extent, on observation by the pupil but the pupil supervisor should discuss both the basic techniques of oral advocacy and any specific points that might arise in a particular case, so that the pupil may observe intelligently, and derive benefit from observations made. Pupil supervisors are encouraged to arrange for pupils to attend as wide a range of courts and tribunals as possible (if necessary with other members of chambers) having regard to the type of work that the pupil is likely to take on in the early years of practice. If the opportunity to attend a particular type of court does not arise in the course of a pupillage (e.g. an appellant court), the pupil supervisor should discuss any particular aspects of advocacy that the pupil should consider in respect of such a court and in the case of a first six month pupil encourage the pupil to make good the omission during the subsequent period of pupillage. During the second six months, if a pupil is doing his or her own work, a pupil supervisor should exercise supervision over the pupil's preparation and take time to evaluate the process.*

*In addition, the pupil must attend the advocacy course provided by his or her Inn or Circuit in the first six months. These courses provide the opportunity for pupils to practise oral advocacy under instruction. They can only be effective if pupils have prepared adequately and pupil supervisors must ensure that pupils are given sufficient time to prepare and approach the task very seriously.*

*Pupil-supervisors should initial and date the last column when they consider their pupil has achieved a satisfactory standard having regard to the objective set out for this checklist.*

1. General	Satisfactory
1.1 Become familiar with the proper modes of address in court and in chambers	
1.2 Become familiar with the proper use and mode of citation of authorities in court	
1.3 Obtain through observation and discussion an understanding of proper conduct towards: (i) the tribunal and court staff; (ii) the lay client, and others attending court with the client; (iii) the instructing solicitor; (iv) witnesses (including expert witnesses); (v) other parties and their representatives; (vi) litigants in person and lay advisers.	
1.4 Obtain through observation and discussion an understanding of proper conduct towards the press and other media ( <i>para. 709</i> )	
1.5 Be aware of counsel's responsibilities when dealing with a litigant in person or unrepresented defendant.	
1.6 Fully understand Counsel's professional duties when conducting proceedings in court ( <i>see Code of Conduct, especially para 708</i> ). This includes a clear understanding of the purpose as well as the limitations on examination-in-chief, cross-examination and re-examination, particularly where there are statutory restrictions such as the sexual history of a complainant, hearsay and previous bad character.	
1.7 Completion of Advocacy Compulsory Course (during first six)	

<b>2. Applications</b>	
<p>2.1 Develop the skills of preparation for oral advocacy on applications.</p> <p>2.2 Practise and develop the preparation of the appropriate paperwork to support oral argument on applications, e g<sup>15</sup>:</p> <ul style="list-style-type: none"> <li>(i) Skeleton arguments;</li> <li>(ii) Chronologies;</li> <li>(iii) Case Summaries;</li> <li>(iv) Minutes of order</li> <li>(v) Bad Character and Hearsay applications and responses to same</li> <li>(vi) Applications under S.41 of the Youth Justice and Criminal Evidence Act, 1999 relating to a complainant's sexual history</li> </ul> <p>2.3 Develop by observation (and where possible practise) the skills of narrative advocacy in respect of applications generally, case management and other directions hearings.</p>	
<b>3. Trials - witness handling</b>	
<p>3.1 Develop the skills of preparation for examination in chief and cross examination.</p> <p>3.2 Develop by observation (and where possible practise) the skills of examination in chief and cross examination.</p> <p>3.3 Understand proper conduct in relation to witnesses (paras. 705; 707 and the written standards for the conduct of professional work).</p> <p>3.4 Understand the proper role of independent and expert witnesses.</p> <p>3.5 Consider the special considerations which apply when dealing with children, vulnerable or intimidated witnesses, in particular, what special measures may be appropriate to assist such witnesses and the type of questions that are appropriate in an individual case</p>	

<sup>15</sup> These are examples – some will not apply to those doing a civil only pupillage

<b>4. Trials and other final hearings - Narrative advocacy</b>	
<p>4.1 Practise and develop the skills of preparation for narrative advocacy in trials and other final hearings.</p> <p>4.2 Practise and develop the preparation of the appropriate paperwork necessary to support oral argument, e g<sup>16</sup>:</p> <ul style="list-style-type: none"> <li>(i) Skeleton arguments</li> <li>(ii) Chronologies;</li> <li>(iii) Case summaries;</li> <li>(iv) Bad Character and Hearsay applications</li> <li>(v) Applications under S.41 YJ&amp;CEA, 1999</li> </ul> <p>4.3 Develop by observation (and where possible practise) the skills of narrative advocacy in trials and other final hearings.</p>	
<b>5. Appeals</b>	
<p>5.1 Develop the skills of preparation for oral advocacy on appeal in particular the preparation for use on an appeal of skeleton arguments.</p> <p>5.2 Develop by observation (and where possible practise) the skills of appellate advocacy.</p>	

<sup>16</sup> These are examples – some will not apply to those doing a civil only pupillage

Pupil's record of work done or work diary references

Signed (pupil):

Date:

Pupil Supervisor's comments

Signed (supervisor):

Date:

### **Section 3: Conferences and Negotiations**

*Pupils must develop conference and negotiation skills. This is likely to be largely by observation and discussion with the pupil supervisor. Pupils should be instructed with regard to the preparation for conferences and negotiations, including the making and retaining of a full and accurate note of all conferences. Even where participation is based on observation, pupils should be as actively involved as possible. The objective should be to raise the pupil to a standard where he or she can competently conduct a conference or negotiation.*

*If a particular topic described below does not arise during a pupillage (for example negotiating with a litigant in person) a pupil supervisor should discuss with the pupil the sort of difficulties and pitfalls that can arise in such a situation and how to avoid them. The record of work done should, where possible, cross-refer to the relevant points below.*

*Pupil-supervisors should initial and date the last column when they consider their pupil has achieved a satisfactory standard having regard to the objective set out for this checklist.*

<b>1. Conferences</b>	<b>Satisfactory</b>
1.1 Discussion of skills needed in conferences (including potential difficulties and pitfalls that can arise and how to avoid them) 1.2 Active involvement in preparation for a conference session 1.3 Observation of conference sessions (actual participation may take place but is not a requirement) 1.4 Experience through observation of the conduct of conferences with: <ol style="list-style-type: none"> <li>1. Solicitors and clients;</li> <li>2. Solicitors only;</li> <li>3. Counsel only.</li> </ol> 1.5 Experience through observation of the conduct of telephone conferences.	
<b>2 Negotiations</b>	
2.1 Discussion of skills needed in negotiation (including potential difficulties and pitfalls that can arise and how to avoid them) 2.2 Active involvement in preparation for a negotiation session 2.3 Obtaining through observation and discussion and understanding of the conduct of negotiations in particular: <ol style="list-style-type: none"> <li>(i) dealing with an opponent;</li> <li>(ii) dealing with the client and advising on settlement;</li> <li>(iii) any special considerations that apply when conducting negotiations in the absence of the instructing solicitor.</li> </ol> 2.4 Understanding of any special considerations which may arise in relation to negotiations with litigants in person.	



Pupil's record of work done or work diary references

Signed (pupil):

Date:

Pupil Supervisor's comments

Signed (supervisor):

Date:

#### **Section 4: Drafting, Paperwork and Legal Research**

*A pupil must be able to locate and utilise relevant sources of information, both primary (case and statute law and citation indexes) and secondary (textbooks, digests, encyclopaedias and legal journals) and to use the information so acquired appropriately in opinion writing, pleading, drafting and case preparation.*

*It is of the greatest importance that pupils practise and develop the necessary skills by producing practical work and receiving constructive feedback on that work from their pupil supervisor. Simply observing the work of the pupil supervisor is insufficient. Feedback on a pupil's work should be given as soon as possible by the pupil supervisor whilst the work is still fresh in the mind of the pupil. Pupils must have demonstrated the appropriate degree of competence in the skills set out below. Non-litigation drafting is of equal importance but since the type of work is likely to vary, reference should be made in Section 5, on the specialist area. Paperwork in criminal matters may be dealt with specifically in the Criminal checklist*

*The record of work done should, where possible, cross-refer to the relevant sections and sub sections below. Pupil-supervisors should initial and date the last column when they consider their pupil has achieved a satisfactory standard having regard to the defined skills and competencies.*

<b>1. Opinions and Advice</b>	<b>Satisfactory</b>
<p>1.1 Develop and practise the skill of preparing accurate and concise Opinions and other Advice, written in plain English, and demonstrating the following abilities:</p> <ul style="list-style-type: none"> <li>(i) To identify relevant facts from the papers and identify sources as appropriate;</li> <li>(ii) To identify and explain the relevant legal issues;</li> <li>(iii) To apply the relevant law to the relevant facts and to draw appropriate conclusions and give appropriate advice.</li> </ul>	
<b>2. Letters</b>	
<p>2.1 Develop and practise the necessary skills:</p> <ul style="list-style-type: none"> <li>(i) for drafting letters written in accordance with pre-action protocols or similar.</li> <li>(ii) for drafting Part 36 Offers or similar.</li> </ul>	

<b>3. Pleadings</b>	
<p>3.1 Practise and develop the skill of pleading – in particular preparation of:</p> <ul style="list-style-type: none"> <li>• Statements of Case, i.e. Particulars of Claim, Defence and Reply.</li> <li>• Requests for and provision of further information.</li> </ul> <p>3.2 Consider and understand the requirements of the Code of Conduct in relation to pleading and in particular to allegations of fraud (<i>paragraph 704</i>).</p> <p>3.3 Request and provide further information</p>	
<b>4 Witness Statements and Affidavits</b>	
<p>4.1 Understand the ethical considerations in drafting statements of fact for witnesses in civil actions (<i>paragraph 704 and the Guidance on Preparation of Witness Statements dated 16 January 2001</i>).</p> <p>4.2 Understand the ethical considerations concerning contact with witnesses and taking statements in relation to criminal cases (<i>paragraph 704 and Written Standards for the Conduct of Professional Work para 6</i>).</p> <p>4.3 Practise and develop the skill of drafting in appropriate language, using concise and accurate statements of fact.</p>	
<b>5. Orders</b>	
<p>5.1 Develop and practise the ability to draft orders, including Tomlin form and other consent orders.</p>	
<b>6. Non litigation drafting</b>	
<p>6.1 This should be covered as it is of equal importance but, as the type of work varies, substantial reference should be made on the appropriate specialist checklist.</p>	
<b>7. Paperwork in criminal matters</b>	
<p>7.1 This should be covered as appropriate (see Criminal Checklist)</p>	

<b>8. Cross references and research</b>	
8.1 Build on research work carried out on the Bar Course, further to cover: <ul style="list-style-type: none"><li>• Case Law</li><li>• Statute law</li><li>• Citation indexes</li><li>• Secondary sources as appropriate and depending on area of specialism: text books, digests, encyclopaedias and legal journals.</li></ul>	

Pupil's record of work done or work diary references

Signed (pupil):

Date:

Pupil Supervisor's comments

Signed (supervisor):

Date:

**Section 5: Specialist Areas**

*All pupils should additionally gain an understanding and experience of work in the specialist area practised by the pupil supervisor and the Approved Training Organisation where the pupillage is being undertaken.*

*This checklist may be completed by cross reference to the other checklists and vice versa.*

The specialist section of the checklist adopted by the Approved Training Organisation must be adhered to and the relevant checklist completed and submitted together with the checklists for the core areas.

There are currently thirteen sample checklists that have been prepared by the Specialist Bar Associations in each of the following areas:

- Administrative
- Chancery
- Commercial and Admiralty
- Criminal
- Family
- Crown Prosecution Service
- Employed Commercial
- General Commercial
- Intellectual Property
- Local Government and Planning
- Personal Injury
- Revenue
- Technology and Construction
- Immigration

Checklists for the above specialist areas are available on the BSB website (<http://www.barstandardsboard.org.uk/Educationandtraining/whatispupillage/pupillagechecklists/checklistsdownload/>). They are provided independently in this way, so as to allow for periodic updating as appropriate by the relevant Specialist Bar Association.

ATOs and supervisors may also develop their own checklists subject to approval by the Bar Standards Board. Applications should be submitted at least one month before the pupillage commences.

**Appendix J – Certificates of satisfactory completion (first six/second six)**



REGULATING BARRISTERS

**CERTIFICATE OF SATISFACTORY COMPLETION OF PUPILLAGE (FIRST SIX)**

I<sup>i</sup>, (name).....

of (chambers/employer).....

being registered by the Bar Standards Board as an approved pupil supervisor.

hereby certify that my pupil (name).....

called to the Bar by (Inn).....

on (month).....(year).....

has satisfactorily completed a period of<sup>ii</sup> ..... months non-practising pupillage (first six) between the following dates:

from.....to.....

has completed the compulsory pupillage advocacy course during this period:<sup>3</sup>

and completed the relevant parts of the pupillage check list conscientiously throughout this period of pupillage.

Signed.....dated.....

**See overleaf for notes**

## NOTES

<sup>1</sup> The pupil supervisor at the conclusion of the first six should complete this form, after consulting with any other supervisor throughout this period of pupillage. If the pupil supervisor is not available to sign this certificate, another person acceptable to the Bar Standards Board (e.g. Head of Chambers, Director of Pupil Training) may sign it, provided that the certificate confirms who the pupil supervisor was and why they have not signed the certificate for the relevant period.

<sup>2</sup> Where a pupillage has been reduced by the Qualifications Committee, the certificate should be amended accordingly.

<sup>3</sup> The pupillage advocacy course must be completed by the end of the non-practising (first six) period of pupillage.

Upon completion of the first six, pupils are issued with a provisional qualification certificate (PQC), which confirms completion of the first six. The PQC does not have any practising rights.

Please contact the Bar Standards Board if further guidance is needed in completing this form.

### Meeting your needs

We can provide our literature in different formats, such as Braille, large print or on audio tape or compact disc. If you would like this form in a different format, please contact us on 020 7611 1444.

This certificate should be submitted to:

Rachel Reeves, Bar Standards Board, 289-293 High Holborn London, WC1V 7HZ, DX 240 LDE. We encourage pupils to email a scanned copy of this certificate, please email: [pupillagerecords@barstandardsboard.org.uk](mailto:pupillagerecords@barstandardsboard.org.uk)

**Bar Standards Board  
September 2010**





REGULATING BARRISTERS

**CERTIFICATE OF SATISFACTORY COMPLETION OF PUPILLAGE (SECOND SIX)**

We of<sup>1</sup> (chambers/employer).....

being registered by the Bar Standards Board as an approved training organisation with approved pupil supervisor(s) or having been approved by the Qualifications Committee as a supervisor of external training.<sup>2</sup>

hereby certify that our pupil (name).....

called to the Bar by (Inn).....on (month).....(year).....

has satisfactorily completed a period of<sup>3</sup> ..... months practising pupillage (second six) between the following dates:

from.....to.....

Our pupil has completed the compulsory pupillage courses required by the Bar Standards Board under Regulation 27(a) of the Bar Training Regulations. We have read and discussed the completion of the check list with the above pupil. We confirm that to the best of our knowledge and belief it has been completed accurately and satisfactorily in terms of the standards and competencies as defined in the pupillage handbook.<sup>4</sup>

Pupil supervisor.....dated.....

from.....to.....

Pupil supervisor.....dated.....

from.....to.....

Pupil supervisor.....dated.....

from.....to.....

Pupil supervisor.....dated.....

from.....to.....

Head of Chambers.....dated.....

Director of Pupil Training.....dated.....

**See overleaf for notes**

## NOTES

<sup>1</sup> This form should be completed by **each** pupil supervisor involved in the practising period of pupillage (second six), the Head of Chambers and the Director of Pupil Training. If this form cannot be signed by all, the form should indicate who is unable to sign the form and why they are not available. The form **must** be completed by a minimum of two members of the approved training organisation, one of whom must be the Head of Chambers or Director of Pupillage Training.

<sup>2</sup> All periods of external training must have been approved in advance by the Qualifications Committee.

<sup>3</sup> Where a pupillage has been reduced by the Qualifications Committee, the certificate should be amended accordingly.

<sup>4</sup> The completed pupillage check list must be returned with this certificate.

Please contact the Bar Standards Board if further guidance is needed in completing this form.

### Meeting your needs

We can provide our literature in different formats, such as Braille, large print or on audio tape or compact disc. If you would like this form in a different format, please contact us on 020 7611 1444.

This certificate should be submitted to:

Rachel Reeves, Bar Standards Board, 289-293 High Holborn London, WC1V 7HZ, DX 240 LDE. We encourage pupils to email a scanned copy of this certificate, please email: [pupillagerecords@barstandardsboard.org.uk](mailto:pupillagerecords@barstandardsboard.org.uk)

**Bar Standards Board**  
**September 2010**



REGULATING BARRISTERS

**Notification of a material change in pupillage or external training arrangements**

**Personal details**

Surname.....

Other names.....

Title (e.g. Mr, Mrs, Ms).....

Date of birth.....

Address.....

.....

Telephone.....

Email address.....

**Pupillage details**

Name and address of ATO / external training / organisation.....

.....

.....

Telephone.....

**Details of material change<sup>1</sup>**

Commencement date of new arrangements<sup>2</sup>.....

Details of material change:

**Please turn over**

Pupil's declaration

*I confirm that the details given are correct and agree to notify the Bar Standards Board of any further material change in my pupillage arrangements.*

Signed.....

Date.....

**Declaration of pupillage provider<sup>3</sup>**

*I confirm that the arrangements set out above have been agreed through the appropriate procedures in my chambers/with my employer.*

Signed.....

Name.....

Position.....

Date.....

<sup>1</sup> A material change includes a change of home or pupillage or training address, a change of pupil supervisor, a change to the date of the commencement and/or proposed end date of pupillage or external training or a change in location due to a pupillage secondment. Advice should be sought from the Bar Standards Board if there is uncertainty as to whether other changes are material.

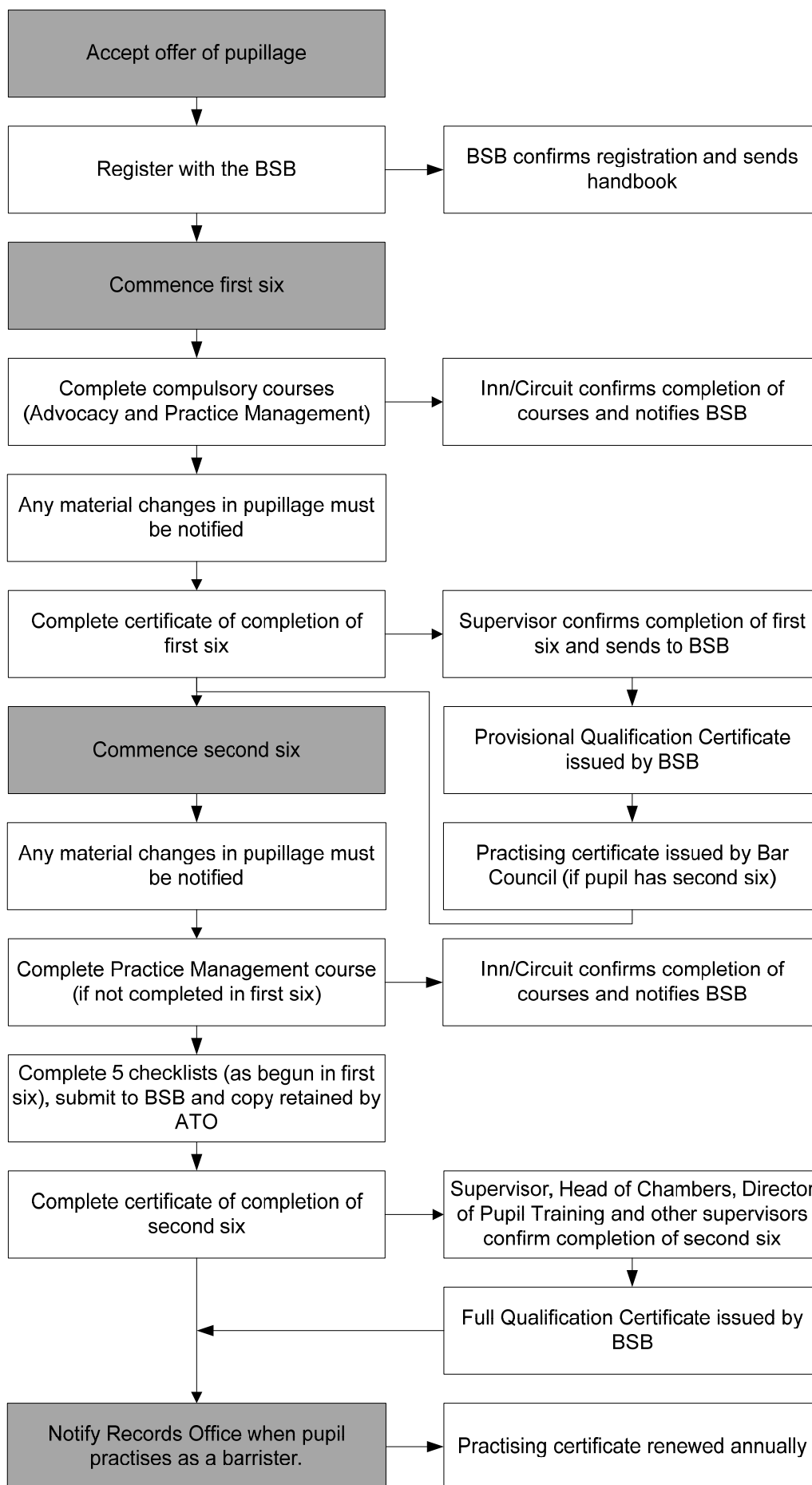
<sup>2</sup> Under the Bar Training Regulations, the "non-practising" period of pupillage must be a continuous period of six months. The "practising" period of pupillage must be commenced not later than twelve months after the completion of the "non-practising" period. The "practising" period of pupillage must be a continuous period of six months or with only such intervals (each not exceeding one month) as to ensure that it is completed within the overall period of nine months. Permission must be obtained from the Qualifications Committee to waive any of these requirements.

<sup>3</sup> This declaration must be signed by the Head of Chambers or other person authorised by the Head of Chambers in the case of a pupillage in chambers. For a pupillage in employment, it should be signed by a person authorised by the employer.

**Meeting your needs**

We can provide our literature in different formats, such as Braille, large print or on audio tape or compact disc. If you would like this form in a different format, please contact us on 020 7611 1444

**Please return completed form to: Rachel Reeves, Bar Standards Board,  
289-293 High Holborn, London WC1V 7HZ, DX 240 LDE, Fax: 020 7831 9217**



## Appendix M – Dutton Definition and Criteria

### DUTTON DEFINITION OF ADVOCACY

The Dutton Report on Advocacy Training defines the skills necessary for a modern advocate to include:

- ability to persuade orally;
- ability to persuade by written argument;
- cogent legal and factual analysis;
- ability to develop reasoned argument;
- forensic skills with evidence.

### DUTTON ASSESSMENT CRITERIA

#### Introduction

It is in the interests of the public, the Court and the profession that all barristers present their cases to the highest professional standards. They must prepare thoroughly and present their cases in a manner which is clear, well organised, efficient and persuasive. The criteria which are set out below (which pupils and their advocacy trainers will be working with) are intended to achieve these objectives.

It is expected that most pupils, with the training that they have already undergone, will achieve more than a minimum level of competence in their advocacy and it is the intention of the Course Provider that pupils should do so. If, during training, trainers are concerned that a pupil may not be achieving the minimum level of competence in any of the core areas set out in the attached advocacy certificate, they will refer a pupil to the Course Director and he/she will be given the opportunity of further training. If after such further training the pupil still has not achieved a minimum level of competence in any of the core areas, he/she will be offered an assessment conducted independently of the Provider.

This system was piloted for pupils commencing pupillage in October 2004 and, after review and adjustments required, became fully operational for the pupillage intake from September 2005. From September 2005, in order for pupils to acquire a Provisional Qualification Certificate, the certificate needs to be signed by the relevant responsible person (being either the person designated by the Provider or the Bar Council following a referral for assessment).

#### 1 Principles

- *Criteria need to be few in number, so that both advocate and trainer concentrate on the absolute essentials.*
- *Substantive teaching objectives (e.g. use of short questions) should be given primacy over style (e.g. courtesy).*
- *Assessment of performance should take into account the presence or absence of evidence of preparation.*
- *The assessment of skeleton arguments should be separate and distinct from their use in oral submissions.*
- *The Advocacy Training Council and the Bar Council will review this scheme and the assessment criteria at the end of the pilot period and on a regular basis thereafter.*

#### Skeleton Arguments

- Clarity of purpose.
- Logical structure and organisation.
- Identification of issues.
- Clarity of expression.
- Appropriate length.
- Appropriate documentary references to external materials.

- Appropriate references to authorities.

## **2 Oral Submissions**

### **(1) Organisation**

- Clear Aim (Sets out clearly what the judge is being asked to do and the source of the power to do it).
- Coherence (structured, logical, with clarity of expression).
- Logical structure (beginning, middle and end).
- Appropriate use of materials and appropriate use of authorities.

### **(2) Delivery**

- Audibility.
- Pace.
- Clarity of expression.
- Use of appropriate language (language adapted to the tribunal).
- Appropriate eye contact.

### **(3) Inter-action with tribunal/ dealing with opponent's arguments**

- Anticipating points.
- Dealing with court's questions/concerns (i.e. answering questions, not avoiding them; not being thrown by questions; having an honest, and coherent, approach).
- Relating submissions to skeleton arguments.
- Appropriate use of authorities.
- Adapting to opponent's points.

## **3 Examination in Chief**

### **(1) Organisation:**

- Clear and logical structure (telling the story through the witness).
- Relevance (avoiding the irrelevant and eliciting substance whilst avoiding the irrelevant).

### **(2) Form of Questions**

- Avoiding leading questions (except where appropriate e.g.: facts not in dispute).

### **(3) Delivery**

- Audibility.
- Pace.
- Awareness of the tribunal.

### **(4) Inter-action with the witness**

- Audibility.
- Appropriate control of the witness (use of appropriate language, apt and focused questions).
- Short, simple questions, one point at a time.
- Listening to answers.
- Appropriate conduct towards the witness.

## **4 Cross-Examination**

### **(1) Organisation**

- Clarity of purpose.
- Logical structure and organisation.
- Identification of issues.
- Clarity of expression.
- Demonstrates knowledge of the facts.
- Relevance.

- (2) **Form of Questions**
  - Closed and concise.
- (3) **Delivery**
  - Audibility.
  - Pace.
  - Knowing when to stop.
- (4) **Inter-action with the witness**
  - Controlling questions.
  - Listening to answers.
  - Flexibility.
  - Form of questions (fact not argument).
  - Courtesy
- (5) **Putting the case/Support for closing submission**
  - Eliciting necessary facts.
  - Making challenges necessary to put the case.
  - Laying the factual foundation of the case.

### **Language**

These assessment criteria are used for those intending to practise at the Bar of England and Wales, where the official language of the Court, and hence teaching and assessment, will be English. Where the official language of the Court is not confined to English, such as in Wales under the Welsh Language Act 1993, the pupil is entitled, if he or she wishes, to be taught and assessed in Welsh.

### **Disability**

The criteria, their application and this scheme in general may be modified (where appropriate) in relation to any pupil who has a disability, within the meaning of the Disability Discrimination Act 1995. Anyone who requires such a modification to be made should make this known to the Course Provider as early as possible, and normally before the start of the course, so that full consideration can be given to any modifications that may be appropriate.



## Appendix N

### *Forms and templates (available from the BSB)*

- ATO Authorisation - Application Form
- Application for waiver from funding
- Application for waiver from advertising
- Application to register Pupillage
- Notification of change in pupillage
- Templates for record keeping by pupils
- Appraisal preparation form
- Appraisal form
- Pupil assessment record
- Certificate of satisfactory completion of first six pupillage
- Certificate of satisfactory completion of second six pupillage
- Example of Pupillage contract

*Additional guidance and forms are available relating to Dispensations and Waivers from Pupillage Requirements (as dealt with by the Qualifications Committee):*

- **External Training** – all or part of the practising six months of pupillage may be satisfied by a form of external training (time spent with a solicitor, marshalling, secondment etc)
- **Reductions in pupillage** – based on relevant experience, usually considered in relation to 'external training'
- **Breaks in and late commencement of pupillage** – e.g. maternity, medical
- **Applications from Qualified Foreign Lawyers under BTR59** – usually required to pass some or all of the Bar Transfer Test and to undertake a period of pupillage
- **Application for admission to the Bar as a European Lawyer** – normally need to take all or part of the Bar transfer test but exemptions may be possible
- **Application for registration as a Registered European Lawyer and applications by Registered European Lawyers for membership of the Bar** – normally eligible without undertaking any further examinations or pupillage
- **Application for admission to the Bar as a distinguished Law Teacher under BTR59** – exceptionally granted for candidates of very high academic distinction – some parts of the Bar Transfer test and/or pupillage may be required
- **Application for Temporary Membership of the Bar under BTR78** – In respect of specific case/s only and to allow applicants to appear in court for specific cases only – no pupillage requirement
- **Qualified Solicitors** – exemptions from pupillage and the Bar Transfer test are automatic for solicitors with higher rights of audience in both civil and criminal proceedings; exemptions may be granted to other applicants
- **Non-Graduate Mature Students** – Applications for by persons who do not meet the normal minimum academic degree requirement for entry to the Bar must meet specified criteria. Normal Pupillage requirements apply
- **BTR59 Applications** – Regulation 59 of the Bar Training Regulations allows the Qualifications Committee to grant exemption from any requirement(s) of the Regulations. A wide variety of applications are made under these regulations, ranging from the very minor to full waiver from all requirements for admission to the Bar.

## Appendix O: Glossary and abbreviations

<b>ALBA</b>	Administrative Law Bar Association
<b>Assessment</b>	is defined in this context by the BSB as ‘a structured measurement of the pupil’s progress against standards’.  Feedback should follow.
<b>Assessment Points</b>	The occasions when an assessment, usually summative, takes place.
<b>ATO</b>	Approved Training Organisation. A set of chambers or any other organisation may only take pupils if it is authorised by the Bar Standards Board as an Approved Training Organisation (see BTRs, Part V – The Professional Stage, paragraph 37 - 41). The term ‘Approved Training Organisation’ (or ‘ATO’) is therefore used throughout this documentation to refer to both chambers and other organisations that are authorised to take pupils.
<b>BACFI</b>	Bar Association for Commerce, Finance & Industry
<b>BALGPS</b>	Bar Association for Local Government and the Public Service
<b>BEG</b>	Bar European Group
<b>BPTC</b>	Bar Professional Training Course (from September 2010)
<b>BSB</b>	Bar Standards Board
<b>BTRs</b>	Bar Training Regulations, effective from 1 September 2009
<b>BVC</b>	Bar Vocational Course (phased out after academic year 2009-10)
<b>ChBA</b>	Chancery Bar Association
<b>CBA</b>	Criminal Bar Association
<b>COIC</b>	Council of the Inns of Court
<b>COMBAR</b>	Commercial Bar Association
<b>CPS</b>	Criminal Prosecution Service
<b>CR</b>	The Consolidated Regulations of the Inns of Court. Superseded by the BTRs from 1 September 2009.
<b>DDA</b>	Disabilities Discrimination Act
<b>Diversity Training</b>	promotion through teaching and course materials of awareness of and sensitivity to issues of race, gender, sexual orientation, religion and disability. Required.
<b>ELBA</b>	Employment Law Bar Association
<b>EWTD</b>	European Working Time Directive
<b>Feedback</b>	is defined as the regular comments on a pupil’s work which the supervisor provides in order to improve performance against the standards and competencies. Feedback is also about reinforcing good practice and work as well as identifying areas of improvement.
<b>FLBA</b>	Family Law Bar Association
<b>Final assessment</b>	End of stage assessment
<b>Formative assessment</b>	Mock or practice assessment upon which individual feedback in preparation for the summative assessment is given.
<b>FQC</b>	Full Qualification Certificate (after which, on payment, a full Practising Certificate may be obtained)

<b>GLS</b>	Government Legal Service
<b>HEFCE</b>	Higher Education Funding Council for England
<b>HEI</b>	Higher Education Institution (i.e. a University, HEFCE funded College or private institution with degree awarding powers)
<b>Inns Rules</b>	Inns' own regulations, supplementary to the BSB
<b>IPBA</b>	Intellectual Property Bar Association
<b>LCLCBA</b>	London Common Law and Commercial Bar Association
<b>Learning Resources</b>	Collective term for Information Technology Audio-visual equipment Accommodation Library Facilities Book stock
<b>Matrices</b>	Documents demonstrating where knowledge or competencies are covered within the training
<b>MCCBA</b>	Midland Chancery and Commercial Bar Association
<b>MCQs</b>	Multiple Choice Questions
<b>MCT</b>	Multiple Choice Test
<b>NCBA</b>	Northern Chancery and Bar Association
<b>NCCBA</b>	Northern Circuit Commercial Bar Association
<b>OLPAS</b>	Online Pupillage Application System replaced by the Pupillage Portal system in 2009.
<b>PBM</b>	Parliamentary Bar
<b>PIBA</b>	Personal Injuries Bar Association
<b>PEBA</b>	Planning and Environment Bar Association
<b>PNBA</b>	Property Bar Association
<b>PQC</b>	Provisional Qualification Certificate (colloquially known as the Provisional Practising Certificate)
<b>PTO</b>	Pupillage Training Organisation (former name). Approved provider of pupillage training, which may be a chambers or other approved institution (e.g. CPS, GLS or commercial organisation). Now known as ATO (see ATO above) from 1 September 2009.
<b>Pupillage Portal</b>	The current online recruitment process for pupils/pupillage in place from 2009 (and replacing OLPAS, for which see)
<b>QAA</b>	Quality Assurance Agency for Higher Education
<b>QAA</b>	Quality Assurance for Advocates (joint BSB/SRA/ILEX project)
<b>RBA</b>	Revenue Bar Association
<b>SBA</b>	Specialist Bar Association
<b>Seen assessment</b>	A seen paper, in the case of a written assessment, must be taken away and completed by a specified date. In the context of oral assessments, 'seen' means a paper or case study that students can take away and prepare prior to the assessment.
<b>Socratic Teaching</b>	The drawing out of information and approaches through debate facilitated by the tutor/supervisor rather than led by the tutor
<b>Summative assessment</b>	Assessment that may count towards a final assessment or grading
<b>TECBAR</b>	Technology and Construction Bar Association
<b>WCCBA</b>	Western Chancery and Commercial Bar Association

## Appendix P - Useful contacts and addresses

### Bar Standards Board - 289-293 High Holborn, London WC1V 7HZ (0207 611 1444)

Chair of the BSB	Baroness Ruth Deech
Director of the BSB	Mandie Lavin (2010)
Chair, Education & Training Committee	Dr John Carrier
Chair, Qualifications Committee	Simon Monty QC
Chair, Pupillage Sub Committee	Samuel Stein QC
Head of Education Standards	Dr Valerie Shrimplin
Pupillage Officer	Andrea Clerk ( <a href="mailto:aclerk@barstandardsboard.org.uk">aclerk@barstandardsboard.org.uk</a> )
Administration (pupillage)	Claire Pace ( <a href="mailto:cpace@barstandardsboard.org.uk">cpace@barstandardsboard.org.uk</a> )
Manager, Qualification Regulations	Joanne Dixon ( <a href="mailto:jdixon@barstandardsboard.org.uk">jdixon@barstandardsboard.org.uk</a> )
Training Regulations (external, reductions)	Pauline Smith ( <a href="mailto:psmith@barstandardsboard.org.uk">psmith@barstandardsboard.org.uk</a> )
Training Compliance Assistant	Rachel Reeves ( <a href="mailto:rreeves@barstandardsboard.org.uk">rreeves@barstandardsboard.org.uk</a> )

### Inns of Court

Lincoln's Inn	The Treasury Office, Lincoln's Inn, London WC2A 3LT <a href="http://www.lincolnsinn.org.uk">www.lincolnsinn.org.uk</a> , Tel: 020 7693 5130 Deputy Under Treasurer Education: Joanna Robinson
Inner Temple	Treasury Office, Inner Temple, London EC4Y 7HL <a href="http://www.innertemple.org.uk">www.innertemple.org.uk</a> , Tel: 020 7797 8171 Deputy Under Treasurer Education: Fiona Fulton
Middle Temple	The Treasury, 2 Plowden Buildings, Temple, London EC4Y 9AT <a href="http://www.middletemple.org.uk">www.middletemple.org.uk</a> , Tel: 020 74274800 Deputy Under Treasurer Education: Christa Richmond
Gray's Inn	The Treasury, 8 South Square, Gray's Inn, London WC1R 5EU <a href="http://www.graysinn.org.uk">www.graysinn.org.uk</a> , Tel: 020 7458 7900 Deputy Under Treasurer Education: Quinn Clarke

### Circuits

South Eastern Circuit	<a href="http://www.southeastcircuit.org.uk">www.southeastcircuit.org.uk</a>
Midland Circuit	<a href="http://www.midlandcircuit.co.uk">www.midlandcircuit.co.uk</a>
Northern Circuit	<a href="http://www.northerncircuit.org.uk">www.northerncircuit.org.uk</a>
North Eastern Circuit	<a href="http://www.northeasterncircuit.co.uk">www.northeasterncircuit.co.uk</a>
Western Circuit	<a href="http://www.westerncircuit.org.uk">www.westerncircuit.org.uk</a>
Wales and Chester Circuit	<a href="http://www.walesandchestercircuit.org.uk">www.walesandchestercircuit.org.uk</a>

### Specialist Bar Associations

Administrative Law Bar Association	<a href="http://www.adminlaw.org.uk">www.adminlaw.org.uk</a>
Bar European Group	<a href="http://www.bareuropeangroup.org.uk">www.bareuropeangroup.org.uk</a>
Chancery Bar Association	<a href="http://www.chba.org.uk">www.chba.org.uk</a>
Commercial Bar Association	<a href="http://www.combar.com">www.combar.com</a>
Criminal Bar Association	<a href="http://www.criminalbar.com">www.criminalbar.com</a>
Employment Law Bar Association	<a href="http://www.elba.org.uk">www.elba.org.uk</a>
Family Law Bar Association	<a href="http://www.flba.co.uk">www.flba.co.uk</a>
Intellectual Property Bar Association	<a href="http://www.ipba.co.uk">www.ipba.co.uk</a>
London Common Law & Commercial Bar Association	<a href="http://www.lclcba.com">www.lclcba.com</a>
Midland Chancery & Commercial Bar Association	Refer to <a href="http://www.barcouncil.org.uk">www.barcouncil.org.uk</a>
Northern Chancery Bar Association	<a href="http://www.nchba.co.uk">www.nchba.co.uk</a>

Northern Circuit Commercial Bar Association	<a href="http://www.nccba.org.uk">www.nccba.org.uk</a>
Parliamentary Bar Mess	Refer to <a href="http://www.barcouncil.org.uk">www.barcouncil.org.uk</a>
Personal Injuries Bar Association	<a href="http://www.piba.org.uk">www.piba.org.uk</a>
Planning & Environmental Bar Association	<a href="http://www.peba.info">www.peba.info</a>
Professional Negligence Bar Association	<a href="http://www.pnba.co.uk">www.pnba.co.uk</a>
Property Bar Association	<a href="http://www.propertybar.org.uk">www.propertybar.org.uk</a>
Revenue Bar Association	<a href="http://www.revenue-bar.org">www.revenue-bar.org</a>
Technology and Construction Bar Association	<a href="http://www.tecbar.org">www.tecbar.org</a>
Western Chancery & Commercial Bar Association	Refer to <a href="http://www.barcouncil.org.uk">www.barcouncil.org.uk</a>

### Other Associations and contacts

The Law Society	<a href="http://www.lawsociety.org.uk">www.lawsociety.org.uk</a>
Solicitors Regulation Authority	<a href="http://www.sra.org.uk">www.sra.org.uk</a>
Law Centres Federation	<a href="http://www.lawcentres.org.uk">www.lawcentres.org.uk</a>
BMIF	Telephone: 020 7621 0405
Free Representation Unit (FRU)	<a href="http://www.freerepresentationunit.org.uk">www.freerepresentationunit.org.uk</a>
Bar Association for Local Government & the Public Service	<a href="http://www.balgps.org.uk">www.balgps.org.uk</a>
Bar Association for Commerce, Finance & Industry	<a href="http://www.bacfi.org">www.bacfi.org</a>
Association of Women Barristers	<a href="http://www.womenbarristers.co.uk">www.womenbarristers.co.uk</a>
Society of Asian Lawyers	<a href="http://www.societyofasianlawyers.com">www.societyofasianlawyers.com</a>
Bar Lesbian and Gay Group	<a href="http://www.blagg.org">www.blagg.org</a>
Society of Black Lawyers	<a href="http://www.blacklawyer.org">www.blacklawyer.org</a>

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