

CHULS Response to the Consultation of the Bar Standards Board on *Future Bar Training: Shaping the education and training requirements for prospective barristers*

Submitted to the Bar Standards Board on 6 January 2018

Question 1: Should the BSB have regulatory oversight of students? Please explain why or why not.

CHULS believes that regulatory oversight of students would be a disproportionate response. The vast majority of professional regulators do not undertake this role. Education providers are experienced in dealing with matters of student discipline which might touch upon 'fitness to practice'. They are also accustomed to reporting any such matters to the regulator.

Question 2: Do you think the BSB should continue to require membership of an Inn as a mandatory part of Bar training? Please explain why or why not.

With respect to student membership of the Inns, CHULS is supportive of the BSB's 'Option A' (the removal of the *requirement* for student membership of an Inn). Therefore, our answer to the question is 'no'. This would be in line with the legal requirements of the Bar and would reduce the regulatory burden upon students. Our view is that law students possess sufficient knowledge as consumers to make informed decisions regarding the value of any claimed benefits that derive from student membership and that they should be given the freedom to exercise that choice.

Question 3: If you answered 'yes' to question 2, do you think the BSB should continue to require "student membership" of an Inn or set the requirement at the point of (or just before) being called to the Bar? Please explain why or why not.

n/a

Question 4: Do you think the BSB should continue to delegate responsibility for educational and fit and proper person checks to the Inns of Court? Please explain why or why not.

CHULS believes that the BSB should not delegate responsibility for these matters. In terms of risk based regulation, it is difficult to justify the delegation of areas which should be central to the BSB's regulatory mandate. CHULS believes that clear and direct regulatory control of these matters, in part through the supervision of the functions performed by training providers, is a proportionate response to this issue.

Question 5: Do you think the BSB should require DBS checks as part of the fit and proper person checks? If you do, who do you think should perform this function and why?

We believe that DSB checks are a proportionate response to the issue of whether a potential member of the profession is a fit and proper person. CHULS believes that it is the regulator who should be performing this central regulatory function. This would be consistent with the approach taken by other regulators, such as the SRA.

Question 6: Do you agree with our proposals to improve the current checks as described? Please explain why or why not.

We agree with the importance of more robust oversight of the checking of academic qualifications. However, our view is that it is crucial that training providers be provided with clear instructions as to the expectations upon them in this regard, and that all training providers be held to the same standards with respect to this regulatory function.

Question 7: Do you think that the Inns or the BSB should oversee student conduct? Please explain why.

CHULS is supportive of Option A - that the BSB should take regulatory responsibility for the conduct of students. We find the reasons that have been outlined in the Consultation Paper in favour of Option A to be compelling. From a risk based regulatory perspective, we would find it extremely difficult to justify the delegation of a central regulatory function such as this.

Question 8: Do you think that the BSB should continue to prescribe qualifying sessions as part of the mandatory training requirements? Please explain why or why not, including (if appropriate) which elements of the qualifying sessions are particularly useful to be undertaken prior to practice.

The view of CHULS is that, from a regulatory standpoint, it is impossible to justify the continuing prescription of the qualifying sessions as part of the mandatory training requirements. We are not persuaded that the sessions are essential in order for the student to meet the requirements of the Professional Statement. On that basis, from a regulatory standpoint, their prescription cannot be justified.

Question 9: If you answered 'yes' in question 8, should there be any changes to the existing arrangements? If so, do you prefer Option B or Option C to reform our oversight of qualifying sessions? Please explain why.

n/a

Question 10: If you answered 'yes' in question 8, do you think that other training providers could provide qualifying sessions? Please explain why or why not, including what elements would need to be delivered by or in association with the Inns themselves to ensure their benefits are to be retained.

n/a

Question 11: Do you have any alternative suggestions for how qualifying sessions might help students meet the requirements of the Professional Statement?

No. Our view is that students are able to meet the requirements of the Professional Statement without the qualifying sessions. We do not think it helpful to speculate on what added value might be offered by any inputs over and above what is necessary to meet the educational requirements of the Professional Statement.

Question 12: Do you think we should allow pupillages to vary in length? Please explain why or why not.

CHULS is sympathetic to the argument that an outcomes based approach to regulation is inconsistent with arbitrary rules regarding the length of time for pupillage. However, we are mindful of the risks outlined in the consultation document that might arise if Pupillage Training Organisations were allowed to vary the length of pupillage. We are inclined to the view that variation should be allowed on an exceptional basis and that this would need to be carefully managed by the regulator.

Question 13: If you answered 'yes' to Question 12, please tell us whether you think there should be minimum and/or maximum lengths associated with this change and what those minimum or maximum lengths should be. Please explain why.

Given that our view is that variation from the one year standard pupillage should be exceptional and justified, we do not have a view on a minimum or maximum length of pupillage.

Question 14: Which option, if any, for reforming the award of the Provisional Practising Certificate do you support? Please explain why.

CHULS does not have a strongly held view on this question. However, from a risk focused, outcomes based regulatory approach, it would seem that Option B provides the most compelling answer.

Question 15: Do you think the minimum pupillage award should be raised? Please explain why or why not.

CHULS is of the view that the minimum pupillage award should be raised. We believe that this is justified on the grounds of fairness and access to the profession.

Question 16: If you answered 'yes' to question 15, should we use the National Living Wage or the Living Wage Foundation benchmark for the minimum award? Please explain why.

As a first step, CHULS would support the use of the National Living Wage as a benchmark. This would mitigate the risk of unintended consequences in terms of pupillage numbers. We are not convinced that the issue of student debt is relevant to this question.

Question 17: Do you think the current exemption from the funding rules for transferring lawyers should be removed? Please explain why or why not.

CHULS is supportive of the BSB's proposal to remove the current exemption from the funding rules for transferring lawyers. We support this proposal on the grounds of fairness and the creation of a level playing field.

Question 18: Do you agree that we should introduce re-authorisation of Approved Training Organisations (ATOs)? Please explain why or why not.

We agree with re-authorisation. CHULS believes this is an entirely proportionate response to the requirement of ensuring effective regulatory oversight.

Question 19: If re-authorisation were to be introduced, how many years do you think the defined authorisation period should last (eg 3 or 5 years)?

CHULS does not have a strong view on this issue, although our experience of educational revalidation suggests that 5 years should be proportionate.

Question 20: Do you think the BSB should allow pupil supervisors to supervise more than one pupil? Please explain why or why not.

CHULS does not have a strong view on this issue, although we are attracted to the benefits of flexibility that might come from allowing pupil supervisors to supervise more than one pupil.

Question 21: Should the BSB prescribe pupil supervisor training outcomes? Please explain why or why not.

The position of CHULS is that it is entirely appropriate for the BSB to prescribe pupil supervisor training outcomes. This is a proportionate response to the need for quality control of pupil supervision.

Question 22: How should the BSB seek assurance that outcomes in pupil supervisor training are being delivered?

A system of quality assurance that is proportionate would seem to be the obvious way in which the BSB might seek such assurance.

Question 23: Should organisations be required to provide this assurance during the authorisation process? Please explain why or why not.

CHULS does not have a strong view on this question, although it would seem logical that assurance that training of pupil supervisors is in place would occur during the authorisation process.

Question 24: Should the provision of pupil supervisor training be opened up to other providers (other than the Inns)? Please explain why or why not.

CHULS would be supportive of such a development in order to enhance quality and to promote diversity in training provision.

Question 25: Should regular refresher training be mandatory for all pupil supervisors? Please explain why or why not.

CHULS is supportive of the idea of regular refresher training as a mandatory requirement for pupil supervisors. This is in keeping with the principles of Continuing Professional Development.

Question 26: If you answered 'yes' in Question 25, how often should it be undertaken (eg every 2, 3 or 5 years)?

CHULS does not possess the expertise to take a view on this question.

Question 27: Should delivery of mandatory courses for pupils be opened up to other training providers? Please explain why or why not, specifically considering the risks and benefits.

In principle, CHULS is supportive of the opening up of mandatory courses to the market in training providers, on the basis that competition will enhance quality and diversity of provision. However, this position is subject to the development of a rigorous, yet proportionate, system of quality assurance with respect to training provision.

Question 28: Do you find the language and terminology used in the Authorisation Framework sufficiently clear and accessible? If not, please provide examples of how and where this could be improved.

Bearing in mind the level of expertise and the experience of our membership, we find the language and terminology used in the Authorisation Framework to be sufficiently clear and accessible.

Question 29: Referring to the relevant sections of the draft Authorisation Framework, are the definitions of flexibility, accessibility, affordability and high standards sufficiently clear? If not, how could they be improved?

CHULS is of the view that the four principles have been defined in a manner that is reasonably clear and easy to comprehend.

Question 30: Do you think we have identified the correct mandatory indicators for flexibility, accessibility, affordability and high standards? If not, what do you think should be added or removed and why?

CHULS is content with the identification of the mandatory indicators for the four principles.

Question 31: Do you agree with our proposals for recognising transferring qualified lawyers? Please explain why or why not.

CHULS is supportive of a system of exemptions for recognising transferring qualified lawyers, provided that the determination of exemptions is made through a individualised determination of the individual's professional competence.

Question 32: Do you think there is anything which we have omitted and that we should take into account when considering transitional arrangements?

CHULS is reassured that the BSB has carefully considered the need for transitional arrangements.