THE COUNCIL OF THE INNS OF COURT

Response to the Legal Education and Training Review

Discussion Paper 01/2012: "Key Issues (1): Call for Evidence"

Introduction

1. This is the Response by the Council of the Inns of Court (COIC), the representative body of the Inns of Court, to the Discussion Paper 01/2012 "Key Issues (1): Call for Evidence" produced by the Research Team of the Legal Education and Training Review (LETR - a body jointly commissioned by the Solicitors Regulation Authority (SRA), the Bar Standards Board (BSB) and the Institute of Legal Executives Professional Standards (IPS)).

2. COIC broadly welcomes the LETR and particularly its focus on ensuring that qualifications are as robust as possible for a modern legal profession. COIC appreciates the need to anticipate the legal services market of the future by ensuring that the education and training regime continues to instil the skills and competencies necessary to serve in the consumer and public interest to the highest ethical standard.

3. COIC expresses the concern of its members, however, with regard to the timescale, costing and implementation of the LETR, and its possible recommendations. First, COIC does not feel that sufficient time has been allowed to assess the strengths and weaknesses of the current system. Secondly, it notes the lack of costings of any of the potential options currently being mooted, with the result that it is unable to provide informed comments as to feasibility. Thirdly, it would welcome clarification as to how the Research Team's recommendations might be taken forward by the front-line regulators, particularly bearing in mind the radical scope of some of the proposals under consideration. Fourthly, COIC has been surprised by remarks made by the Chair of the Legal Services Board (LSB) in March 2012 to the effect that the Review must lead to "radical" change - a view that COIC considers lacks a sound evidence base. Fifthly, COIC would like to understand what regulatory deficiency has been identified that required the LETR to be commissioned, and what problem the LETR is now seeking to address. The Discussion Paper does not make a clear case why reform in this area might be required at this time.

4. Despite those concerns, and although COIC was not identified as a consultee to the LETR, it looks forward to engaging actively in the Review. Given their longstanding involvement in legal education and training, the Inns of Court can add significant experience and expertise. As the Research Team will be aware, the role of the Inns in the vocational training of barristers, from students through to established practitioners, is fundamental. The standard of training is widely recognised as a kitemark for training across the legal sector and in international jurisdictions. The Inns are able to call upon barristers to give up their time pro bono to teach, interview scholarship candidates, mentor students, and serve on committees, as well as participate in a wide range of outreach activities and other work. A costing exercise last year demonstrated that 30,000 hours of time per year were donated to the Inns in this way alone, the vast

majority of it to advocacy and ethics training. If charged out at a commercial training rate, this donation of time would be worth millions of pounds.

5. This Response points to a number of considerations that COIC believes should inform the approach of the Research Team in the coming months. When time allows, COIC hopes to be able to engage with the process in more detail. The Research Team expressed the concern in their Risk Register dated March 2012 that the Bar would be expected to face particular difficulties in "responding to LETR Discussion Papers within the very tight timeframes agreed". COIC's own difficulty in responding within the time allowed has been acute. Given the importance of the Review to matters that are of critical interest and concern to COIC, it is to be hoped that the Research Team will afford it rather more time in future to consider its further proposals.

6. This Response is organised in the following way:

- Section A sets out the nature and functions of COIC and the Inns of Court;
- Section B explains the role of the barrister;
- Section C analyses the likely need for barristers in the legal services market of the future;
- Sections D to H examine the fitness for purpose of the current education and training regime for barristers, and show the steps which the Inns, the Circuits, the Bar Council (BC) and the profession in general have taken in that regard in recent years;
- Section I considers the case for changing those requirements in the future;
- Section J considers the case for radical, as opposed to incremental, change; and
- Section K attempts to provide answers to the questions raised by the LETR Discussion Paper.

7. This Response is supplemental to, and supportive of, the separate response of the BC.

Section A: COIC

8. COIC has the following members: (a) a President; (b) (i) the Treasurers of the four Inns of Court; and (ii) eight members appointed by the Inns; (c) (i) the Officers (i.e. the Chairman, Vice-Chairman and Treasurer) of the BC; and (ii) the Chairman of the Education and Training Committee of the BC; and (d) the Chairman of the BSB and other BSB representatives. It should be pointed out that whilst the Officers of the BC are members of COIC, they are not entitled to vote.

9. Since 1987, nine distinguished members of the judiciary have served as President (Lord Donaldson of Lymington; Lord Taylor of Gosforth; Sir Martin Nourse; Sir Andrew Leggatt; Sir Andrew Morritt; Lord Justice Mummery; Lord Justice Waller and Lady Justice Smith). The serving President is currently Lord Justice Etherton, who will be succeeded in August 2012 by Lord Justice Pitchford.

10. The function of COIC is to be the representative body of the Inns of Court, with the power to bind the individual Inns by its decision on any matter referred to it by the BC or any one or more of the Inns, and to formulate and co-ordinate the policies of the Inns. COIC has also served as a forum in which matters of common interest can be discussed. Over the years, issues as varied as deferral of Call to the Bar, the vocational stage of training and the enshrinement of the Inns' role in legislation have been the subject of discussion.

11. Underneath COIC, a variety of committees (including the Advocacy Training Council (ATC), the Inns of Court and the Bar Educational Trust (ICBET), the Inns of Court Libraries Liaison Committee, the Senior Executives Committee and the Inns' Students' Officers and Continuing Education Committee) carry out the detailed work of ensuring that the legal education and training functions of the Inns are properly coordinated and administered.

12. The role of the ATC is worth emphasising. The primary function of this body (which has just adopted a new constitution) is to be responsible for providing leadership, guidance and co-ordination in relation to the pursuit of excellence in advocacy. The range of the ATC's responsibilities is briefly described in Sections E and F below.

13. Whilst the four Inns of Court (Lincoln's Inn, the Inner Temple, the Middle Temple and Gray's Inn) are independent of each other, they have similar constitutions, are of equal standing, and act together in matters affecting their common interest through the medium of COIC. The Inns have agreed, along with the BC, on certain regulations which govern the admission of students and call to the Bar of England and Wales.

14. The principal education and training functions exercised individually by the Inns are:

    (a) the provision of high quality training for students, pupil barristers, new practitioners and established practitioners, through a variety of educational activities (in particular through the teaching of oral and written advocacy, and of ethics);

    (b) the provision of financial assistance to new entrants to the profession through the award of scholarships and bursaries to students and young barristers (totalling just under £5m in 2012); and

    (c) the provision of law libraries and other facilities to barristers and students.

15. Every barrister must belong to one of the Inns of Court. In general, no person may be called to the Bar of England and Wales unless they have completed the academic and vocational stages of training, and a person must have been admitted as a student to one of the Inns before they can attend a vocational course.

16. COIC has recently sent to the LETR Research Team a paper entitled "The Role of the Inns of Court in the Provision of Education and Training for the Bar". This document outlines the way in which the four Inns deliver a broad range of legal education and training. The document describes in detail the Inns' outreach to schools and university students, and follows their engagement from the point at which they join as students of the Inns throughout their careers until their retirement from practice. It also outlines the Inns' work relating to regulatory issues (admission; Call; student discipline; appointment and briefing of Pupil Supervisors, Qualifying Sessions; and

Pupil and New Practitioner Advocacy Training). COIC commends this document to the LETR Research Team as a ready means of gaining a valuable insight into the practical ways in which the Inns nurture the disciplines and skills that are a prerequisite to practice at the Bar.

17. Given COIC's role in facilitating a close working relationship between the four Inns, the BC and the BSB, and its keen interest in education and training, it considers that it is well placed to offer the Research Team a view informed by the Inns on the comments and proposals made in the Discussion Paper under response.

Section B: the role and duties of the barrister

18. The term "barrister" is a title conferred at the same time as the degree awarded by one of the four Inns through Call to the Bar, recognised by the Education (Recognised Awards) Order 1988. Upon qualification, a barrister becomes bound by the professional principles listed in section 1(3) of the Legal Services Act 2007 (LSA), and by the duties laid down in The Code of Conduct of the Bar of England and Wales. The Code of Conduct classifies certain duties to which barristers must subscribe as "fundamental principles". Foremost among these is the general duty, which applies to every barrister, whether practising or not, not to engage in any conduct which is:

    (1) dishonest or otherwise discreditable to a barrister;

    (2) prejudicial to the administration of justice; or

    (3) likely to diminish public confidence in the legal profession or the administration of justice or otherwise bring the legal profession into disrepute.

    As a corollary to this duty, barristers must not engage in any occupation if it may adversely affect the reputation of the Bar or prejudice their ability to attend properly to their practice.

19. The Code of Conduct adds that a practising barrister has an overriding duty to the court to act with independence in the interests of justice. The barrister must assist the court in the administration of justice and must not deceive or knowingly or recklessly mislead the court. Further examples of the duty to the court are the responsibilities of counsel to conduct proceedings economically, to bring all relevant authorities to the attention of the court whether or not they assist counsel's case, to bring to the attention of the court any procedural irregularity which occurs during the course of the trial, to ensure that the court is not invited to enforce an illegal transaction, and not to make allegations of dishonesty without a proper basis to support them.

20. Moreover, practising barristers must not:

    (1) permit their absolute independence, integrity and freedom from external pressures to be compromised;

    (2) do anything (for example, accept a present) in such circumstances as may lead to any inference that their independence may be compromised;

    (3) compromise their professional standards in order to please their clients, the court, or a third party;

(4) give a commission or present or lend any money for any professional purpose to, or accept any money by way of loan or otherwise from, any client or any person entitled to instruct them as an intermediary;

(5) make any payment to any person for the purpose of procuring professional instructions; or

(6) receive or handle client money, securities or other assets other than by receiving payment of remuneration or (in the case of an employed barrister) where the money or other asset belongs to the employer.

Barristers are individually and personally responsible for their own conduct and for their professional work, and must exercise their own personal judgment in all their professional activities.

21. A self-employed barrister is under a general duty in any field in which they profess to practise and in relation to work which is appropriate to their experience and seniority: (1) to accept any brief to appear before a court in which they profess to practise; (2) to accept any instructions; and (3) to act for any person on whose behalf they are instructed. This duty is known as the "cab-rank rule", and it applies irrespective of whether the client is paying privately or is publicly funded, and irrespective of the party on whose behalf the barrister is instructed, the nature of the case, and any belief or opinion which the barrister may have formed as to the character, reputation, cause, conduct, guilt or innocence of the person. There are circumstances, however, in which self-employed barristers must refuse to accept instructions, and others in which they may so refuse.

22. These dry (but important) rules do not reveal the breadth and depth of the toolbox of skills that barristers are trained to acquire. Before turning to examine those skills in more depth, COIC observes that the Research Team use the words "legal professionals" as a generic term in the Discussion Paper, covering, for example, those who write wills (for which no formal legal training is currently required) and immigration advisors (conveying specialist and limited instruction on basic law), as well as solicitors and barristers. COIC suggests that it would be misleading and unhelpful to suggest that dental hygienists, orthodontists and dental surgeons, by way of obvious analogy, could all be considered "dental professionals" for the purposes of education and training. COIC trusts that the Research Team will similarly resist the notion that there is or should be a "one size fits all" approach either to legal training, or to the qualifications and experience of legal practitioners.

23. By the nature of their role and training, barristers dedicate their time to (1) the provision of specialised and often complex legal advice (considered in paragraphs 24 to 27 below); and (2) the preparation and strategic planning of trials and other hearings (see paragraphs 28 to 35 below).

(1) Legal Advice

24. Answering complex legal questions requires the time and space to undertake in depth research and analysis, and think at length about the issues. It is inconsistent with having to run tens or hundreds of files. Legal writing is a skill which develops with training and practice, and the proffering of well thought out and independent opinion (in the sense that the advisor is one step removed from the day-to-day management of

client and potential litigation) often results in substantial time and money being saved, which would otherwise be wasted in fruitless litigation.

25. There will always be a need for this cadre of specialist advisors. In today's legal market, where the law is ever more complex, there is a constant need for advice on complex points in apparently simple cases. It is neither practical nor economically viable for this work to be done by a "frontline" lawyer charged with meeting clients, discovering their problems, taking initial statements, making preliminary investigations, writing letters, organising funding and offering general advice over a potentially wide range of areas, especially if the case is potentially publicly funded and the amount to be earned is very limited (requiring greater turnover of cases just to break even).

26. Further, compared to the charges which solicitors are compelled to impose as a result of their own financial pressures, the Bar is a highly cost-efficient means for specialists to group together, ensuring that they have a support network of administration (and the expertise and advice of colleagues) which they would never be able to afford if working alone.

27. The skills acquired through the current education and training system for barristers is well respected throughout the legal profession. This can be seen by the growing number of solicitors firms that are recruiting in-house barristers. The employed Bar now makes up nearly 20% of the profession, with barristers in a variety of roles in a range of sectors – from Government departments, to corporate firms, to other regulatory bodies, such as the Financial Services Authority and General Medical Council.

(2) Advocacy

28. The preparation and strategic planning of trials and other complicated court hearings require skill and expertise, largely learned in the first instance from the current education and training regime. It would be a complete misconception to think of it merely as "speaking in Court". The effective administration of justice depends on judges being able to rely on advocates who are willing and able (by reason of ability and time available) to prepare their cases thoroughly, identify the relevant issues in any case and address their questions and submissions to such issues, identify the appropriate legal framework for the case and assist with the legal issues which concern the court (often analysing complex and confusing areas of law) and do so without wasting time and resources.

29. Lady Justice Hallett recognised this point in a speech earlier this year to the Solicitors Association of Higher Court Advocates:

> "We depend upon advocates to do our job properly. Any drastic reduction in the quality of the representation before us and the inevitable and inexorable rise in the number of litigants in person is bound therefore to affect the quality of what we do and ultimately affect our independence. Access to justice will be denied."

30. In the same theme, Ward LJ commented in a coda to the judgment of the Court of Appeal[1] in a recent case:

> "[This] case also highlights another danger, namely that as Legal Aid is withdrawn, more and more cases will suffer from the lack of proper representation, judges will struggle and justice may be denied."

31. Given Hallett LJ's audience the point that may be made is that advocacy may be carried out by other legal professionals. It must be accepted, however, that the preparation for any hearing which is other than simple, straightforward and procedural requires time and commitment. It is inconsistent with having to respond to numerous other professional demands (such as client calls, interviews, the taking of statements, letters, investigations and management of the daily developments which can occur in the numerous cases which may be ongoing in a busy frontline lawyers office). It is also inconsistent with an environment which requires a large staff to undertake all of the activities described above and who, of course, need salaried remuneration.

32. Further, the preparation for any hearing or trial of any complexity requires the advocate to take a step back and look forensically at the case. For those who are mixed up in the daily preparation of the case, meeting the client regularly and carrying the weight of their expectations, it is often difficult to give robust advice about the strengths and weaknesses of various points or approaches or to identify a more rigorous identification of the issues to be pursued.

33. The current regulatory regime, which provides for a separate education and training system for the Bar, provides solid grounding in these skills, as opposed to other equally essential skills for the protection of the consumer. It is surely evident that it must be in the public interest for there to be a cadre of people who undertake advocacy at this level. It is inconceivable, given the complexity of their work and the potential effects on clients in terms of liberty, family, their homes or their economic wellbeing (to name but a few concerns) that such individuals should not be specialists in advocacy, as well as specialists in certain areas of law. It is also inconceivable for the public not to expect those individuals to be highly-trained, independent, and focused on their skills.

34. The Bar has long provided such a cadre of individuals. It is committed to the provision of excellence in advocacy. Unlike many other professions, its senior practitioners provide the younger members with hours of training, all unpaid. There is a cohesion and commitment which would not be capable of reproduction if one started from scratch. The Inns provide valuable opportunities for peer review.

35. The LETR is invited therefore to draw the conclusion that there is an obvious public interest in the continued availability of a highly trained and skilled cadre of lawyers able to provide detailed analysis and competent advocacy, as well as specialist legal education that no other institutions would be able to provide in such a cost-effective way. There is an obvious consumer interest in legal services being provided as cheaply as possible. That interest is served in particular by the Bar, where a large number of self-employed individuals with low overheads compete for work. As these

[1] Baldwin v Berryland Books [2010] EWCA Civ 1440.

paragraphs show, therefore, the Bar serves both the public interest in the maintenance of the rule of law and the delivery of justice; and also the interest of the consumer in the cost-effective delivery of an essential service.

Section C: the need for barristers in the legal services market of the future

36. Given the qualities identified in Section B above, and the evidenced requirement for a specialist profession with advocacy expertise, it is difficult to see what change there might be in the legal services market that would prompt a revision to this requirement in the future. As has been made clear, the current structure of the self-employed Bar means low overhead costs, to the benefit of consumers and the legal marketplace more generally.

37. If it is accepted that specialist advocates and advisers will continue to be required in the legal marketplace, and that the current independent structure of the Bar is of benefit to the consumer, it may be questioned whether there are any weaknesses in the current educational system, as well as any additional skills and competencies that might be required as a result of introduction of alternative business structures (ABSs), and the growing globalisation of legal services.

ABSs

38. The introduction of ABSs in particular might be said to afford an opportunity for legal services to be supplied in a way that might better meet the consumer interest. It would be premature to offer a concluded view on an emerging situation, and COIC contents itself for the present with the observation that ABSs simply represent different structures within which barristers will continue to perform their primary role of providing specialist advice and expertise in advocacy. It would surely be wrong to suggest that ABSs will provide a means by which the quality of the specialist services provided by the Bar should be downgraded by allowing less specially trained and regulated representation. There is an obvious risk, which has been communicated in numerous consultations, that the liberalisation of entry into the legal services market will lead to a decline in standards. The opening up of access to justice that the LSA promotes must be accompanied by quality of service provision and outcomes.

39. That sentiment is shared by the judiciary. In her speech earlier this year, Hallett LJ added:

> "A lawyer is not simply a purveyor of legal services. S/He has clients not consumers. It is an important distinction because a lawyer owes a duty to a client. The relationship between lawyer and client is one of trust and confidentiality. A lawyer must act independently and avoid possible conflicts of interest. S/He must only accept work within his/her sphere of competence. S/He is ultimately responsible for ensuring s/he complies with a strict code of conduct and s/he must answer to his professional body, if they fail so to do. ... Nor is it in the public interest to allow a flood of ill-trained and ill prepared purveyors of legal services upon the market in the name of consumerism or diversity. No-one should be allowed to qualify as a lawyer be it solicitor, barrister, or legal executive unless they are fit to be let loose on the public. That means a rigorous system of training."

Globalisation

40. COIC questions the assumption in the discussion paper that England and Wales is no longer a major international legal hub. Paragraphs 78 to 83 of the Discussion Paper suggest that "the best people tend to do LLMs in the US"; that it is possible to receive "top class law school training [in the US]"; and that "Admission to the New York Bar is increasingly becoming the 'gold standard'". The conclusion drawn is that "the profession in England & Wales and law firms based here [are] at a serious competitive disadvantage".

41. COIC is not complacent, but it does not recognise this image. Here too, Hallett LJ draws from her own experience to paint a different picture:

> "The British legal profession and the judiciary, produced from amongst its ranks, are currently held in high esteem throughout the world. Their reputation for professionalism and integrity is second to none. As a result the UK attracts work (on a conservative estimate £3.2 billion in 2009) and we attract requests for assistance from developed and developing counties from every continent. We are constantly being asked to provide British judges and lawyers to advise other jurisdictions on how best to develop and sustain robust legal systems and to provide advocacy and judicial training. ...
>
> In so doing we spread the good word and we spread our influence. Thus the British legal profession is an extraordinarily valuable asset to this country. There are many thrusting jurisdictions eager to take our crown. They want our business; they want our clout."

42. When time allows, COIC will furnish the Research Team with further evidence testifying to the high regard in which both the Bar and the system of education and training which produces its practitioners are held. By way of example, nearly 30% of students who currently enrol on the BPTC are from foreign jurisdictions, where the BPTC qualification is held in prestigious regard.

Sections D to H: Fitness for purpose of legal education and training - introduction

43. COIC recognises the concerns expressed by the LETR Research Team regarding (for example) whether particular practices constitute barriers to entry to the market, and it too believes that these matters are important. The Inns and the BC/BSB are working hard to address them. However, those concerns should be seen as subsidiary to the proposition that the process by which barristers are trained should be fit for the purpose of assuring competence at the point at which the barrister is authorised to practise. In this respect, COIC is reassured to note the reference to competence in paragraphs 12 to 14 of the Discussion Paper. That, taken together with the other professional skills to which reference has already been made, is precisely the outcome to which COIC is devoted.

44. There might in the past have been a perception that education and training issues at the Bar were not addressed with the vigour and independence to be expected of a regulatory body. The change in the regime since the formation by the BC of the BSB in January 2006 has however been fundamental. Comments recently and notoriously made by the LSB, apparently upon the basis of anecdotal evidence, that training has not been sufficiently reviewed, is not fit for purpose, and lags behind the USA, are

contrary to the facts, and are diametrically opposed to the experience of COIC and the bodies it represents.

45. In particular, commencing with the Final Report of the Working Party on Entry to the Bar in 2007, the BSB has embarked upon a thorough review of the education and training of the Bar, involving an exhaustive and expert analysis of each of the stages examined in Sections F to H below.

46. The following five Sections examine the fitness for purpose of the current education and training regime for barristers:

- Section D studies the Academic Stage of Training.
- Section E describes the process of training and approving Barristers to become advocacy trainers.
- Section F considers the Vocational Stage of Training.
- Section G analyses Pupillage.
- Section H sets out the requirements concerning post qualification development.

Section D: The Academic Stage of Training

47. A prospective barrister may not enter the vocational stage of training before completion of the academic stage, which is satisfied either by obtaining a qualifying law degree (QLD), or successfully completing a law conversion course (Common Professional Examination - CPE - or Graduate Diploma in Law - GDL). In each case, the student is bound by the BSB's Bar Training Regulations to study the "foundations of legal knowledge", and such other optional law subjects as may from time to time be required by the BSB.

48. COIC is not involved in the selection or formulation of the foundation subjects. Although the Inns have strong links with the universities, both via their academic members, and through the liaison work that their education and training departments carry out, they do not influence the choice of the foundation subjects, and take the view that it is not within their remit to put forward proposals concerning the academic stage of training.

49. It is nevertheless worth making a number of points. First, training for, and practice at, the Bar require a secure grounding in the principles of law in force within the jurisdiction. Although there is merit in considering whether ethics and business skills might be desirable for inclusion at this stage, the existing foundation subjects do broadly supply a good knowledge base for training for the Bar. Even if the barrister never practises in crime (for example), it will be useful to have been made aware of the broad outlines of the subject. Equally, of course, it must be recognised that the foundation subjects alone will not be sufficient for practice in specialist fields.

50. Secondly, students who have completed the law conversion course will bring other knowledge from having read for a different degree. For example, for intellectual property work it may be beneficial to have read an undergraduate science degree. A

considerable number (in the region of 40%) of barristers are non-law graduates. Accordingly, in assessing whether a QLD should remain regulated, or whether a move towards a post-graduate qualification in law is more desirable, the impact on diversity in the profession at a time of increasing undergraduate tuition fees should be a matter for concern. An additional stage and cost in training would almost certainly be regressive for social mobility and diversity. While there has been some innovation in developing four-year exempting degrees, it is unlikely that many universities will shift their courses to include vocational components.

51. Thirdly, while COIC is not averse to considering proposals for the adoption of other entry qualifications, it does consider that such other proposals will need to find an acceptable alternative means of delivering the sufficient knowledge base in applicants which is an essential requirement for barristers if they are to fulfil the interest of the public in securing their competence and effectiveness. This said, it has been the experience of the Inns of Court, particularly with careers advice and outreach to schools and universities, that multiple routes into professions often perpetuate more confusion around entry, and reward those students with the knowledge-base and connections to navigate those routes best.

52. Fourthly, COIC considers that it is essential to the future of the legal profession that all that is done, through outreach work, social mobility programmes and funding through scholarships, achieves the objective of encouraging those with the most potential to come forward. The Bar's record in this respect has been set out in its separate response on Equality, Diversity and Social Mobility. Any adjustment to the academic (and indeed any other) stage of training that seems likely to serve a section of the consumer interest should pay heed to the public interest in securing this objective.

Section E: The training and accreditation of advocacy trainers

53. As this Section explains, the training that the Inns of Court and Circuits provide is far superior to what any other legal institution could provide in a similarly cost-effective way. The Inns and the Circuits together ensure that all potential pupils and new practitioners are trained to the highest standard by accredited practitioners.

54. The Inns and Circuits have for well over twenty years been training barristers to become advocacy trainers in order for them in turn to be able to provide advocacy training to pupils, new practitioners and, for the purpose of post qualification development, to barristers of more than three years in practice. This Section summarises the process by which advocacy trainers are selected, trained, assessed and accredited.

55. The ATC coordinates advocacy training for the Inns, and advises on best practice. As a result, the Inns have an agreed method of teaching advocacy trainers, a set of criteria for the assessment of those trainers and a matrix for designating training levels to trainers.

56. Barristers normally of 10 years' experience in advocacy trial work (together with both active and retired members of the Judiciary at both first instance and appellate levels)

in particular areas of law, e.g. family, civil or criminal, are selected by their respective Inns or Circuits to undertake training to become accredited advocacy trainers. These members of the Bar either volunteer themselves or are referred to the Inns by senior advocacy trainers.

57. Each Inn and Circuit has a pool of advocacy trainers ranging from those recently trained with minimal experience to those who have years of experience and highly developed skill. From the latter, each Inn has a relatively small group known as Teacher Trainers who have responsibility for training barristers to become advocacy trainers.

58. The training of a barrister as an advocacy trainer is an organic process which begins with an intensive training session over the course of a weekend. A training group is formed of two Teacher Trainers, four barrister trainees and four students who take turns in playing the role of counsel or witness. A single case will be used over the course of the weekend with 'counsel' undertaking examination or cross examination of the 'witness'. The advocacy trainee will be trained to use the Hampel Method (the method used in teaching advocacy by the Bar and more recently by advocacy tutors on the Bar Professional Training Courses). Following discussion and demonstration, under the tutelage of two Teacher Trainers, the advocacy trainee, through repeated and assessed practice, will develop the ability to apply the Hampel Method in assessing the performance of 'counsel'.

59. Successful completion of the weekend Teacher Training course will result in the designation of a certain level at which the advocacy trainee is able to train students, pupils, new practitioners and more experienced barristers as well as registration of the new advocacy trainer onto the list of accredited advocacy trainers maintained by the ATC. To maintain accreditation, the advocacy trainer must actively train on at least two advocacy training courses each year and undertake refresher training as required.

60. Another role of the Teacher Trainer is to monitor and make recommendations for the development of current advocacy trainers. Known as Rovers, these Teacher Trainers will attend their respective Inn's advocacy sessions in groups of three or in pairs. One aim of the Rover is to assess the performance of the advocacy trainers and to make recommendations for further development, e.g. recommending additional training in a specific area of the use of the Method or recommending an advocacy trainer be moved up to another level as a trainer.

61. The Inns are not complacent, and the ATC is constantly looking for improvement in the quality of the advocacy training delivered to students, pupils and practitioners. However, COIC considers it worth emphasising that:

    (a) many overseas jurisdictions send their pupils and young practitioners to this country to take part in the Inns' courses; and

    (b) advocacy trainers from England and Wales are in demand to deliver both advocacy training and advocacy teacher training courses to overseas jurisdictions.

    Taken together, these factors suggest that advocacy training by the Inns and Circuits is rightly held in high regard.

Section F: The Vocational Stage of Training

62. The first stage of the student's professional training is the vocational stage, which begins after the completion of the educational (academic) stage, and must be completed before undertaking pupillage and before the student can be called to the Bar. A person completes the vocational stage by attending and being certified as having successfully completed a vocational course, which is a course specifically designed to provide instruction in the skills and knowledge required by those who intend to become practising barristers, and which is recognised by the BSB as satisfying the requirements of the vocational stage. The Bar Vocational Course, as it was originally known, was set up following a review by Mr Justice Elias and recommendations made in 2000. The BVC was further reviewed by Professor John Bell of Cambridge University in 2004 at the instigation of the BC, and his findings were reported on by Richard Wilson QC over the course of 2007.

63. The LETR Research Team will know that in 2007 the BSB carried out a fundamental review of the scope and content of the BVC, through a working party under the chairmanship of Derek Wood CBE QC. The purpose of this review was to assure the quality and content of the vocational course against the skills required for practice, and to this end to identify any deficiencies it may have had, and to make recommendations to remedy these.

64. The Wood Review Group reported in July 2008 and made a number of recommendations which were the basis for securing an improved course, under a new name. The proposed improvements included the following:

    (a) The raising of entry qualifications by requiring students to have a second class degree; and either a QLD or a pass at GDL and, in every case, the passing of an aptitude test, covering both cognitive and analytical qualities and competence in English language;

    (b) The introduction of a higher pass mark;

    (c) Central setting and marking of examinations, with a view to achieving greater fairness and consistency.

65. Since the beginning of the 2011-12 year, the vocational course has been known as the Bar Professional Training Course (BPTC). The course is being taken by a total of about 1,700 students this year at 9 academic institutions, spread over 11 sites. There have been inconclusive discussions between the BSB and the LSB with a view to bringing into effect an appropriate aptitude test. The BSB has taken professional advice over many months, including carrying out two pilots of the test, to ensure its validity and reliability. COIC is of the view that such a test would have a highly beneficial effect both because it would exclude those students who have no aptitude for the Course (and for whom the expense of taking it would be a waste of their resources) and on the effectiveness of the Course for those who do have the aptitude to take it. It is hoped that the difficulties will be resolved and the test will come into being in time for those taking the course in the academic year commencing in October 2013.

66. As the LETR will be aware, the nature, scope, objects and content of the Bar Professional Training Regulations are recorded in detail in the BPTC Handbook

issued by the BSB. In short, the overarching aim and objective of the BPTC is to prepare students of the Inns of Court for pupillage at the Bar of England and Wales and to enable those students of the Inns of Court from overseas jurisdictions to acquire the skills of the barrister with a view to enabling them to further their legal education and practise in their own jurisdictions.

67. Amongst the specific objectives of the BPTC are:

(a) To bridge the gap between the academic study of law and the practice of law;

(b) To provide the foundation for the development of excellence in advocacy; and

(c) To inculcate a professional and ethical approach to practice as a barrister.

68. Advocacy teachers on the BPTC course must be accredited by the ATC. This is not a rubber stamping exercise. Over the years, the ATC has recommended to the BSB that a number of prospective tutors should not be accredited. The BSB has always adopted the recommendations of the ATC in this regard.

69. In addition to the BPTC, students are required, during their time on the BPTC course, to attend Qualifying Sessions at their Inn of Court as more particularly described in the document entitled "the Role of the Inns of Court in the Provision of Education and Training for the Bar". These educational Qualifying Sessions are provided by the Inns of Court in many different formats, ranging from lectures to residential advocacy training events. Students are able to choose which of the qualifying sessions they will attend, enabling them to experience many different types of educational input. In addition, the Inns of Court run a number of schemes to build further skills in its student members, including mock interviews, marshalling and mentoring.

70. COIC is of the view that the Bar has given its fullest co-operation and support to the steps taken by the BSB to ensure that the BPTC is appropriate and effective as a "bridge" between the academic and practical stages: it believes that the BPTC is a sound and appropriate vehicle to ensure the delivery of the excellence required. COIC is aware that the course will need to be scrutinised to ensure that the reforms made deliver the projected improvements, but believes and has every reason to believe that the BSB is the appropriate regulator to deal with this. COIC will receive the BSB's reviews of the course as it settles down and the Wood Group reforms are carried out, and will continue to offer constructive criticism in order to ensure that the course fulfils its objective of securing the excellence of training required of it.

71. COIC does however note that the Discussion Paper raises three issues in relation to the BPTC. The first is the disparity between the large number of students on the course as compared with the number of pupillages available. The second is a suggestion that the BPTC might usefully be combined with the LPC in order to postpone the date when the student has to select which branch of the profession in which to pursue his career. The third is the notion that, having regard to the small numbers of pupillages available, the course ought to be devised in such a way as to offer alternative career skills to those who fail to achieve pupillage. Each of these issues is examined in turn.

(1) Disparity in numbers

72. As regards the disparity between BPTC students and pupillages available – what the Discussion Paper refers to as a "bottleneck" - the problem is a matter of great concern to COIC, and it continues to seek to find a solution which is acceptable on public policy and diversity grounds. The essential point is that the availability of pupillages is based on supply and demand: if the area of speciality in which a chambers practices is expanding, the chambers itself will seek to expand and will offer, and be able to fund, additional pupillages. The opposite is also true, and it is quite evident that chambers which practice in areas funded by criminal and civil legal aid are finding extreme difficulty in offering pupillages. On the other hand, the supply of places on the BPTC has been increasing, in large part because the Bar is perceived as a desirable career for those who wish to practice in an honourable profession and pursue the furtherance of justice in the interests of society. COIC is mindful of the fact that to move the bottleneck away from entry to pupillage would simply shift the problem elsewhere along the chain.

(2) Combining the BPTC and LPC

73. As regards the suggestion that there would be merit in combining elements of the BPTC and LPC courses, COIC can see the potential attraction in the idea, but regards it as something which might benefit from closer scrutiny. The difficulty which it perceives such an idea to have at the present time is that such a course, if it could be devised, would almost certainly be longer than either course taken separately, and would be available only at a cost to the student substantially greater than the cost of the present courses to an extent that would be prohibitive, and almost certainly offend against the present and abiding aim of COIC (and the Law Society) to increase diversity in each profession. If such a policy nonetheless were to be seriously proposed, then a rigorous analysis of the content, costs and issues concerning implementation would have to be carried out.

(3) Offering alternative career skills

74. As regards the suggestion that the scope of the BPTC should be extended so as to offer alternative career skills to those who fail to achieve pupillage, COIC notes and is sceptical about the overall advantages of such a notion. The idea arises because of the cost of the BPTC and the notion that the expense will be wasted where a successful student does not achieve a pupillage. The notion assumes that those wishing to go to the Bar will wish to become solicitors if they fail to obtain pupillage, and will not be able to do so unless they pass the LPC. It is however the case that students are given an explicit warning about the possibility that, despite their expenditure, they might even if successful not obtain a pupillage. For its part, COIC would find it regrettable if a course, specifically designed to be a bridge from the academic to the professional stage, were to lose its focus and be redesigned with elements for a different purpose: the redesign would seem not to be possible without either an increase in the cost of the course (with a deleterious effect on accessibility and diversity) or a diminution in the effectiveness of the advocacy skills imparted, contrary to the public interest in providing effective and competent advocates.

75. In the result, COIC at the present time is not persuaded that a credible case can be made out that the BPTC is not fit for purpose, and therefore awaits the outcome of the LETR with interest. The recent Wood Review after a careful examination of the

evidence decided to preserve and enhance the BPTC. Following the introduction of the recommended changes, in-built quality assurance of the course by the BSB is undertaken by a sub-committee of the BSB's Education and Training Committee. This sub-committee includes lay, academic and barrister members; it makes visits to all BPTC course providers, and provides reports of those visits to the BSB's Education and Training Committee. COIC's position is that it believes that the integrity of the BPTC is in safe hands and that the BPTC should not be replaced unless a credible case that it is unfit for purpose can made out.

Section G: Pupillage

76. A person who intends to practise at the Bar of England and Wales must train as a pupil for an aggregate period of not less than 12 months, of which the first six months are non-practising and the second six months may include practice under the supervision of the pupil supervisor. Thereafter, the pupil is required, as a condition of continuing in practice, to fulfil certain other training requirements (which will be considered in the following Section of this paper). In general, a person may not practise as a barrister unless they have complied with these requirements, although the requirements may be waived, in whole or part, in respect of certain qualified persons. Pupil supervisors must take all reasonable steps to provide their pupils with adequate tuition, supervision and experience. The BSB has the power to invalidate (in whole or in part) any pupillage where the failures or deficiencies in that pupillage are such that the value of any pupillage training has or is likely to have been seriously compromised.

77. This longstanding and traditional form of apprenticeship for entrants to the profession has been the subject of repeated review over recent years, for example by a Working Party on Pupillage in 1996, the Collier Committee in 2000, and most recently, by a Working Group appointed by the BSB under the chairmanship of Derek Wood CBE QC, which took into account the report of the Hendy Committee on pupil training organisations and the training of pupil supervisors.

78. The Wood Working Group reported in May 2010 with a total of ninety five observations and recommendations, providing for the experience of pupillage to be remodelled in order to make it an effective vehicle for securing the competence of advocates in the 21st century. The BSB accepted the recommendations and set out mandatory requirements for pupillage in the Bar Code of Conduct, and issued a Pupillage Handbook in September 2011 setting out the fundamental requirements of the new system. The Pupillage Handbook is now in its second edition: in the Preface, Lord Judge, the Lord Chief Justice, describes pupillage as "an indispensable qualification for practice at the Bar of England and Wales". COIC agrees with this judgment.

79. The requirements set out in the Pupillage Handbook include the following:

    (1) A definition of the standards which must be achieved by approved training organisations (commonly Chambers) which offer pupillages, and a requirement that each should appoint a director of training to oversee pupillage and secure compliance with the regulations.

(2) A requirement that, before pupil supervisors may act as such, they must be approved by their Inn, and undergo training to ensure that they understand and have the competence to perform their role.

(3) At both the six month stage and on completion of 12 months, pupils must demonstrate that their pupillage has covered the scope of the specialist practice carried on in Chambers.

(4) Pupillages must be properly advertised, in accordance with principles of fair recruitment and selection.

(5) Specification of the standards to be achieved in pupillage, the assessment process to be carried out and the support and advice to be given to pupils generally.

(6) A requirement for an appropriate Quality Assurance process.

The First Six Months of Pupillage

80. It is the view of COIC that the first six months of pupillage is a period of paramount importance. During this period pupils will shadow their supervisors closely and will learn from the supervisors and their colleagues not merely how to practice as barristers with propriety and effectiveness but also how to behave appropriately towards other pupils, members of chambers and clerks, other barristers, professional and lay clients, witnesses, court staff, members of the public and judges. This supervisor/pupil relationship is seen as critical for assuring competence and high ethical standards of pupils during their most formative years when the adoption of competence, appropriate attitudes and behaviours are most keenly developed.

81. During this (and the second period) pupils will be encouraged to attend the seminars and lectures (provided free to pupils) by the Specialist Bar Associations. Pupils are required by BSB regulations to attend a Compulsory Advocacy Course (a minimum of 12 hours training in which they must achieve a "pass") and a "Practice Management Course" (both of which are run by the Inns of Court or Circuit). The format and content of these courses are detailed respectively in paragraph 4.7 of and Appendix 3 to the "Role of the Inns" paper which has already been commended to the Research Team. Pupils must also complete a Forensic Accountancy course at any time during their first 3 years in practice. In addition to all this, many chambers as a mark of good practice require their pupils to undergo further internal advocacy training in order to improve their confidence, competence and effectiveness as advocates.

The Second Six Months of Pupillage

82. Subject only to the condition that the pupil has completed the non-practising period of pupillage satisfactorily, the BSB will issue the pupil with a Provisional Practising Certificate. In order to obtain this, the relevant checklists for compulsory and specialist areas of study must have been satisfactorily completed, and the pupil supervisor and assessors must certify that the pupil has attained the required standard. The second six pupil may then accept instructions: invariably these are initially comparatively modest instructions, selected and screened by the clerk of chambers for the purpose of enhancing the skill and experience of the pupil, and thereafter increasing in difficulty as the pupil demonstrates mastery of the assigned task.

83. Once admitted to chambers as a tenant, many chambers arrange for the pupil to share a room with a more senior barrister who will act as a mentor to assist in dealing with the ethical, professional and other issues which may arise for the first time in practice.

The Role of the Inns in Pupillage

84. As described in summary form above, the Inns fulfil the following essential roles in the provision of education and training for pupillage under the overall supervision of the BSB:

(a) pursuant to the recommendations in the Hendy Review, assessing the eligibility of prospective pupil supervisors and performance of the training and other procedures to secure their competence; accreditation and re-accreditation every 5 years;

(b) devising and providing necessary training of pupil supervisors and monitoring outcomes; and

(c) Provision of compulsory Advocacy Training and Practice Management.

The Case for Change?

85. The role of pupillage has been developed over the years into a highly effective training tool for supplementing the academic skills of the lawyer with the professional skills of the advocate. COIC regards pupillage as performing an irreplaceable function, elaborately constructed out of the interlocking contributions from the many and various stakeholders interested in securing its integrity and effectiveness. COIC draws particular attention to the fact that the training is provided at no or minimal cost to the pupils themselves, who each receive payment of not less than £12,000 for their maintenance during the period of pupillage (in many cases the award offered by chambers is considerably more), and the continuation of it is reliant on the co-operation and goodwill of the Inns of Court, the Circuits and the profession generally.

86. COIC believes that there is not a sensible alternative means of ensuring the degree of excellence in advocacy and specialist advisory services offered by the Bar, and required in the public interest, other than the provision of training in the form of pupillage in accordance with the regulations imposed by the BSB and monitored by the Inns of Court and the Bar.

87. COIC is strongly of the view that, having regard to the extensive reforms recently carried out, a period during which the result of the reforms can be monitored and any deficiencies that may become apparent, addressed, is preferable to overturning the institution and rebuilding a different training edifice. Indeed, such a step would require those who advocate it to demonstrate that pupillage as an institution is fundamentally flawed – and COIC notes that this is not a position for which the LETR appears to argue at the present time.

88. That does not mean that COIC is complacent: the need to monitor and review the system post-Wood is recognised, and COIC notes the creation of a Group under the chairmanship of Simon Monty QC and Dr John Carrier to monitor the implementation of the Pupillage reforms and ensure that the outcomes are in accordance with the objectives sought to be achieved. All of this is supported by COIC as a means of quality control, quality assurance and protecting the public interest.

Section H: Post qualification development

89. It is in the interest of the consumer and the public at large that all barristers should undertake post qualification training so as both to develop their professional skills and to ensure that their knowledge remains up to date. This is provided for by regulations made by the BSB and administered in large part by the Inns. This section examines the schemes in question.

(1) Pupillage Advocacy Training

90. As Section G has already explained, a person who intends to practise at the Bar of England and Wales must train as a pupil for an aggregate period of not less than 12 months, of which six months are non-practising and six months are spent in practice. The pupil is normally required to complete an assessed advocacy course through the Inn of Court or circuit (and successful completion of this course is a requirement for a Practising Certificate). These courses are taught pro bono by members of the Inns who have been accredited as advocacy trainers by the ATC, and often take the form of a residential weekend where pupils participate in sessions on case preparation, witness handling, speeches and pleas in mitigation. Each pupil is video-reviewed throughout the weekend to give them the opportunity to identify strengths and weaknesses with their advocacy performance. In addition, pupils will take part in other local crown court mock trials and attend sessions on interlocutory applications. COIC reminds the LETR Research Team of the pro bono nature of this work, and its integral role in preparing pupils for practice at the Bar.

(2) The New Practitioners' Programme

91. In the first three years of practice, newly qualified practitioners are required to complete 45 hours of further professional training, including at least 9 hours of Advocacy Training and 3 hours of Ethics on the "New Practitioners Programme". These courses are organised by the Inns of Court and Circuits and taught pro bono by members of the Inns who are accredited advocacy trainers (see Section E above). At some Inns, this training will take the form of a New Practitioners Advocacy and Ethics Residential Weekend, split into civil, criminal, family and employed streams. The programme includes cross-examination of real-life expert medical or accountant witnesses, discussion of ethical problems in an applied conference setting with solicitors, and video-review.

92. The Inns' and Circuits' New Practitioners Programme provides essential practical advocacy skills training to new barristers in their first three years of practice which complements the guidance they receive in the workplace from qualified barristers. Given this extensive training in the first three years of practice, COIC believes that the continuation of the Programme is absolutely necessary in the consumer interest, helping as it does to avoid problems that might otherwise arise with those who might not be sufficiently experienced to be able to deal responsibly with the flow of work attracted to them upon qualification. The importance of the support structure given by chambers to practitioners in their early years (as well as the rule preventing practitioners setting up on their own within those years) cannot be overemphasised as a critical safeguard of the public interest.

(3) CPD

93. After the first three years of practice, barristers are required to undertake 12 hours of continuing professional development (CPD) each year under the Established Practitioners' Programme. All barristers are required to complete CPD hours and return a record card to the BSB on an annual basis. The Inns of Court, Specialist Bar Associations (SBAs) and Circuits run a variety of CPD training courses throughout the year. As Section 6 of the "Role of the Inns" paper explains in more detail, these include lectures, seminars and Advocacy Master Classes on various subjects including Working with Vulnerable Witnesses, Ethics for the Civil Bar and Hearsay.

(4) QASA

94. In principle, COIC is in favour of *a* Quality Assurance Scheme for Advocates (QASA), and in particular of judicial assessment of advocacy, as a way of ensuring that advocacy standards are maintained in the interest of the consumer and of the public. COIC awaits the outcome of the proposals for implementation of the current QASA scheme, following which the Inns propose to offer tailored training and assessment courses to their members. The Inns of Court will, as always, adapt their education and training provision to meet the needs of professional development training in this area.

(5) Pupil Supervisor training

95. Barristers who have been in practice for at least six of the previous eight years may undergo approval and additional training through the Inns of Court and Circuits to ensure that they understand and have the competence to perform this important role.

(6) Post qualification development in the future.

96. It should be clear, in the light of the matters set out in this Response, that COIC takes its responsibility towards the education and training of barristers extremely seriously. Given the substantial changes that have been made in recent years, and the need to monitor the effects of those changes as they bed down, COIC is reluctant to embrace any further substantive reforms without first understanding the need for change.

Section I: Education and Training in the future legal services market

97. If the LETR Research Team accept that it is more likely than not that there will be a continuing need for many years to come for an expert profession with an advocacy specialisation, the question arises what changes to education and training may be required to satisfy that need. Here, the Discussion Paper rightly focuses, among other things, upon (1) the introduction of further subjects as part of education and training; (2) the possibility of more common training for lawyers; and (3) ease of transfer between different branches of the profession. These matters are considered in turn below. COIC will be interested to see whether the Research Team is able to identify for its consideration any further proposals for change.

(1) Diversification of Education

98. To satisfy and protect the needs of consumers and promote and maintain adherence to the Regulatory Objectives, and in particular the professional principles set out in

section 1(3) of the LSA, COIC is aware of the need to consider whether a number of subjects (Mediation and Negotiation Skills; Client Care Skills; Basic Elements of Human Psychology; Accountancy and Numeracy Skills; Information Technology; Business Management Skills; and Professional Ethics) should be included as part of any future training and education modules, whether on a joint training basis (see the Discussion Paper, para 87), or separately, and whether included in what is now the GDL/LPC/BPTC. COIC's view is based on its experience of the contrast between what is currently taught, and what is required by barristers in practice and encountered by them in early years.

99. As ABSs increase in number, COIC considers that training in ethics and business management training may be required, and the Inns will look to adapting their training accordingly to cater for any such demand. In addition, training and education within skills such as accountancy and numeracy may improve the ability to move within legal sectors and might also usefully be included within any reform of continuing professional development.

100. COIC also draws attention to the fact that the Bar as a whole contains a number of specialist areas of practice. Some are of wide application, such as the Criminal Bar, and others are very narrow, such as the Shipping Bar. There may be scope for taking account of this at the BPTC stage, where it is clear that students who have already elected to follow particular areas of practice in pupillage, and if successful beyond, may wish to study specialisms at an earlier stage. COIC suggests that the Research Team might usefully consult the SBAs on this subject.

101. The LETR Research Team will bear in mind that the members of the Inns of Court at all levels of practice, including the judiciary, currently voluntarily and willingly provide a huge amount of unpaid service which is geared towards the education and training of their members. In many cases, much of this will be geared to the barrister's individual practice in order to impart the skills, experience and specialisms which that barrister possesses. For example, a criminal barrister will be able to assist with much experience in advocacy training (e.g. pleas in mitigation), whereas a barrister dealing with civil or commercial work would be able to assist in the training regime where an injunction claim is sought. To lose this level of education and training and this vast resource of goodwill would run counter to the maintenance of the regulatory objectives and in particular the principles set out in section 1 of the LSA. Any future reform should therefore take account of this deep mine of riches, and should seek to maintain and as necessary adapt these methods of training.

(2) Common training

102. Common training for solicitors and barristers currently takes the shape of the QLD/GDL. The question raised by the LETR is whether this common training should be extended to the vocational stage considered in Section F above, so that barristers should learn the business management elements of a solicitors' practice, while solicitors should be inducted into the advocacy elements that characterise the BPTC.

103. COIC accepts that it is useful in principle for barristers to know about the generalities of case preparation and client care. Indeed, many prospective barristers take time out of their student education to engage in work experience in a solicitor's office, if only to confirm them in their choice of career. There is however a world of difference in

training and approach from those involved in "outsourcing" the more complicated or time-consuming tasks. It would be an ever greater obstacle to mobility if those who wanted to be specialists were obliged to undertake the time and expense of training as a generalist and then have to incur further time and expense to undertake the more specialised training.

(3) Mobility between different branches of the profession

104. As they stand, the formal requirements for a solicitor wishing to transfer to the Bar, and vice versa, are as follows:

(a) Fully qualified solicitors who wish to transfer to the Bar take the Bar Transfer Test (BTT - which has just been revised by the BSB). The number of solicitors and overseas lawyers taking this test is increasing significantly, but is still running at the comparatively low rate of 80-100 pa.

(b) Fully qualified barristers who wish to transfer to become a solicitor take the Qualified Lawyers Transfer Scheme (QLTS).

Students who have done the BPTC and been called but wish to become solicitors used to be allowed to take the QLTT (an earlier version of the QLTS) - but not since 2009, since they are not qualified lawyers (an SRA decision supported by the BSB). Correspondingly, LPC students cannot do the BTT.

105. The BSB has the power to exempt qualified lawyers (solicitors or lawyers from other jurisdictions) from the academic, vocational and/or professional stages of training for the Bar. Such exemptions may be granted subject to passing certain sections of the Bar Transfer Test, which allows solicitors and qualified lawyers from other jurisdictions to qualify to practice at the Bar of England and Wales. Conversely, the Qualified Lawyers Transfer Test (QLTT) is a conversion test that enables lawyers qualified in certain countries outside England and Wales, as well as UK barristers, to qualify as solicitors and practise in England and Wales.

106. There will be some who feel unsure about taking the risks involved in becoming a barrister or who feel it is not for them and who become solicitors. Some then discover that they do, in fact, have the skills required for the more specialist role of barrister. The Bar should, and COIC believes does, embrace those people. It is a testament to its ability to encourage such transfers that there is a large group of successful practitioners (many in silk) who started life as solicitors.

107. It would not be in the public interest, however, to do so without some form of quality assessment for transferring lawyers. To do otherwise would be to ignore the added skills required of the barrister. What COIC therefore considers will continue to be necessary in the future is a proper assessment of the applicant's relevant skills and knowledge base, and a proper means of education to bring any deficiencies up to the appropriate standard, as detailed above.

108. There are a few examples of paralegals and barristers' clerks or practice managers who have trained to become barristers themselves. COIC does not, however, believe that there should necessarily be any shortcuts to doing so. Work-based learning is important and indeed essential to develop specialist skills, but the academic and vocational stage is equally important to build legal knowledge, understanding of legal

application and advocacy skills. In addition, given the structure of the self-employed Bar, many of the competencies required to succeed would not easily be learned in other professional environments or capacities.

Section J: The case for radical, as opposed to incremental, change

109. COIC appreciates and understands the need to anticipate the legal services market of the future by planning now for the legal education and training that will be necessary to continue to provide practitioners with the skills and competence necessary to serve the public interest, whether within traditional chambers structures, or as part of ABSs.

110. The Inns of Court have not been complacent in examining their own education and training provisions and adapting them where appropriate to prepare for any changes that may be necessary due to changes in the legal sector following the enactment of the LSA. Many of the shifts in the legal services market have already led to developments in the training. Most recently, this has included:

- Assessing the impact of the Quality Assurance Scheme for Advocates (QASA) on Inns of Court advocacy training programmes and proposing changes to fit the framework of accreditation;
- Formulating additional provision for employed barristers in the New Practitioner Courses and Practice Management Course given the growth of this work;
- Strengthening Pupil Supervisor training to ensure that individuals are well prepared for this oversight position;
- Increasing the level of education provided to school and university students to ensure that those from less-advantaged backgrounds are aware of careers in the legal profession.

111. COIC notes the views recently expressed[2] by the Co-Chairs (Dame Janet Gaymer and Sir Mark Potter) of the LETR Consultation Steering Panel that "fundamental reform [of legal education and training] is necessary for the fulfilment of the regulatory objectives of the LSA which, together with other developments, means that radical changes to the system may be necessary". The LSB has gone further, and made public declarations that the case for radical change has already been made out.

112. While COIC appreciates that there are areas that could usefully be explored, it does not subscribe to the assumption that the current regime is irretrievably damaged. COIC echoes the views of Sir David Clementi, whose independent review into legal regulation included education and training[3]:

> "The current system has produced a strong and independently minded profession, operating in most cases to high standards, able to compete successfully internationally. These strengths would suggest that the failings of the system, identified in the Scoping Study and covered in this Review,

[2] In the April 2012 LETR News Bulletin.

[3] Final Report of the Review of the Regulatory Framework for Legal Services in England and Wales - December 2004, Chapter B, paragraph 32.

> should be tackled by reform starting from where we are, rather than from scratch."

Although Sir David's comment was directed at the regulatory framework, the same comment may be applied with equal justification to the system of education and training.

113. COIC also invites the Research Team to note the views of the Master of the Rolls, Lord Neuberger, concerning what he called "the modern obsession with reform", expressed in this part of a speech in 2009:

> "In this fast changing world it is of course necessary to change, but it is wrong to see reform as inherently good – it costs a lot of money, it increases uncertainty, and it causes confusion and loss of morale. Our ever changing world is a challenge, but our reaction to it should be principled, thoughtful and cautious."

This factor, and others identified by the Master of the Rolls, in his view:

> "contributed, for good and for ill, to the perception of a need to change the regulation, indeed the structure of the legal profession. They each pose a threat and a promise to professional ethics."

114. All the institutions of the Bar, including COIC, recognise the need for the Bar to continue to supply a worthwhile service, and to maintain its global reputation for excellence. COIC knows that the Research Team will appreciate that it will not be in the public interest for the existing system of legal education and training to be condemned as unfit for purpose without a measured and searching analysis of the reasons for and merits of its existence, and cogent proof that it requires replacement. COIC welcomes the acceptance by the Research Team, expressed in the Discussion Paper, of the need for any consideration of change to be based upon evidence, but wishes to stress the danger of reliance upon anecdotal evidence. There can be no substitute for study and understanding of the processes whereby legal education and training is actually delivered. As detailed above, the Bar has only very recently undertaken its own study of these processes. The LETR may provide a convenient forum for the process to be considered further, if that is thought necessary.

115. The Research Team will appreciate, furthermore, that no proposals for reform can sensibly be put forward without a full analysis of the cost of implementation of the proposals, and the impact of the proposals upon the public confidence. While it may seem forward-thinking to wish to part company with the structures of the past, it will not be worthwhile proceeding if the exercise itself causes more damage than it seeks to remedy.

116. Accordingly, before any recommendations are made, COIC feels that research examining the value added of the current regime, such as the Inns and Circuit advocacy training for barristers, would be beneficial, together with an investigation of the costs of change, and primary research on international perceptions of the English and Welsh legal system.

Section K: Responses to the questions posed by the Discussion Paper

117. Paragraphs 98 and 100 of the Discussion Paper list a number of questions and suggestions. COIC's comments in relation to each, drawing upon what has already been said above, are as follows.

The Qualifying Law Degree

Are the Foundations still a sufficient knowledge base?

118. COIC is of the view that training for, and practice at, the Bar requires a secure grounding in the principles of law in force within the jurisdiction. Although there would be merit in considering whether strengthening ethics training might be added to list of the Foundation subjects, it is of the view (subject to this) that the Foundations otherwise do broadly supply a sufficient knowledge base for training for the Bar. However, the Foundations alone will not of course be sufficient where the pupil seeks to practice in a specialist field.

Should any 'subjects' be prescribed, or should its outcomes be redefined in terms of cognitive and other skills?

119. Entrants to the BPTC should be equipped with the "sufficient knowledge base" referred to in the former question. COIC remains to be persuaded whether any of the current Foundation subjects should be substituted by others.

Has its mission and focus changed so much that it is no longer adequate as an initial stage of training?

120. COIC does not understand why the "mission and focus" of the QLD might have changed – except for the purpose of adapting the subjects comprising the foundation subjects to bring them up to date to accord with modern requirements.

The GDL or equivalent

Could there be a larger range of possible entry qualifications for those without law degrees?

121. COIC is not averse to considering proposals for the adoption of other entry qualifications: however it does consider that such other proposals will need to find an acceptable alternative means of delivering the "sufficient knowledge base" in the applicant which it regards as an essential requirement for barristers if they are to fulfil the interests of the consumer and the public in securing their competence and effectiveness. COIC repeats the fact that additional entry routes can often have the regrettable effect of further confusing the system and being of benefit to those who have the know-how to navigate those routes best.

The LPC / BPTC

Is the LPC now so broken up into specific courses serving different hemispheres that the idea of a common core is gone?

122. COIC does not have sufficient knowledge of the LPC to be able to express a view on this question.

Does the BPTC provide sufficient training for any of those actually beginning pupillage, and if not should there be another form of course or qualification which would also suit those who will not achieve pupillages?

123. The BPTC has been specifically designed to ensure that it will operate as a bridge between the academic and professional stage of training for the Bar, and will therefore provide sufficient training for all those actually beginning pupillage. There will of course be some pupils of exceptional ability and natural talent who will find that the BPTC is rather less demanding than they have the capacity to achieve. However, repeated Reviews (and continuous monitoring of recent improvements) lead COIC to conclude that the BPTC remains fit for purpose. For the reasons expressed in Section F of the Response above, COIC does not believe that another form of course or qualification would be appropriate. It should be stressed that the BPTC has been modelled to provide the best and most appropriate training for those who secure pupillage: it would not be in the public interest to redesign the course so as to be fit for those who will not achieve pupillage.

Are either the LPC or BPTC necessary or desirable elements of the qualification pathway?

124. For the reasons already given, COIC is of the view that the BPTC is both necessary and desirable.

<u>The Training Contract / Pupillage</u>

Are these now such bottlenecks, so totally controlled by the existing professionals, that they fall foul of any attempts to achieve fair access?

125. There are four potential bottlenecks which will be faced by any person seeking to become a barrister. First, the primary degree graduation stage at which (currently) a second class degree is required. Secondly, the need to enrol and pass the GDL (where applicable) and the BPTC. Thirdly, the need to obtain pupillage. Finally, there is the need to obtain tenancy, or employment as a barrister within the ranks of the employed Bar.

126. In any profession, there is a filtering process by which the education and training system identifies those most likely to be of the highest standard in the given field or practice. The current filter is there to ensure that the practising barrister can satisfy (in particular) the professional principles set out in section 1(3) of the of the LSA. The filters are not there, nor should they be there, to force career choices to be made which are based on origins, means, or diversity. The research team will no doubt have done and will do comparative research on other professions (for example medicine, accountancy and architecture). In each of those cases, it will be observed that there is a filter to ensure that a competent cohort of intending professionals can reach the next stage and obtain the necessary qualifications and experience to ensure that the needs of the profession and of course the public (the consumer) are met. Without such filters it would be too easy to foist negligent professionals upon the consumer.

127. COIC would at this stage point out the four filters identified above are not 'totally controlled' by 'existing professionals' so that they (the filters or bottlenecks) fall foul of attempts to achieve fair access. The Bar has no control whether direct or indirect over stages 1 and 2. The filters are placed there by the relevant regulatory and

academic authorities. As the Discussion Paper at para 7 recognises, and as COIC agrees, the filters become more refined at the third and fourth stages. The really "fine" filter initially encountered is of course at stage 3, namely the application for pupillage.

128. The reason for the fine filter at stage 3 (the obtaining of pupillage) is not caused by any control exercised by the existing professionals. The causes instead include:

(a) The present number of course providers (9) with an output of around 1400-1500 successful BPTC students. Of that number, the vast majority express an intention to practice at the Bar of England and Wales.

(b) The virtual halving in the number of pupillages to its present level of around 450. This has been caused by the factors referred to above and below, including minimum funding requirements for pupillages. However, the Bar recognises the benefits of the minimum funding requirement on equality and diversity.

(c) The control by the Government of fees at the Criminal Bar in particular which has led to a collapse in earnings with a severe decline (if not extinction in some areas of the country) in the availability of pupillages for that area of work. For example, the number of criminal pupillages on offer in Birmingham in 2011 and 2012 is understood to be nil. The Family Law Bar is also under similar pressure because of the graduated fees system.

The Inns of Court have no control over any of these factors and causes of a decline in work.

129. But, putting causes to one side and whatever the cause of the filter which effectively blocks progress, there should be and there is within COIC a need to recognise that in order to ensure that the outcome of training and education satisfies the professional principles in section 1(3) LSA 2007, there will always have to be a process which leads to the brightest and the best on a fully diverse basis reaching the stage at which they can practice safely in the interests of the consumer. The same is true across the professions broadly. The consumer interest is not served by those who, through either a loose education and training system or qualification process, are allowed to undertake work beyond their competencies.

130. COIC suggest that it is inevitable that because of the supervening factors in paragraph 126 above there will have at some stage to be a form of restraint on supply. Even if, for example, the ability of the Bar to offer more pupillages was reformed, the filter at the tenancy stage would return as it was before minimum-funded pupillage became compulsory. Before then there was an unsatisfactory level of oversupply of pupils for an inadequate number of tenancies and the presence in some chambers of what was referred to as "squatting" where pupils stayed on as pupils, but without a tenancy or in many cases the prospect of one. So they were effectively in limbo, gaining what work they could from the clerks to chambers in which they were "squatting". That is not a state of affairs to which anyone at the Bar would wish to return. COIC notes, in this context, that only 14 third six pupillages are currently being advertised, demonstrating the fact that there is a close correlation currently between amount of work and qualified practitioners to undertake it.

131. There are a number of ways in which the present unacceptable oversupply at the student stage could be resolved, and a subcommittee of COIC has been reviewing ways of addressing this, as part of its study of ways in which numbers of pupillages might be increased. Any reform must take account of the facts that, amongst other things, competition law prevents the limitation of the course providers to a specific number of students, and that market forces may inevitably dictate demand for course places and their cost.

Are [the Training Contract / Pupillage] insufficiently regulated to assure the quality of training?

132. In recent years the regulation of the quality of training given during pupillage has been the subject of increasing stringency: more recently the reforms introduced by the BSB on the recommendations of the Wood Review have substantially increased the degree of regulation of the quality of the training, as more particularly discussed in the main text of this response. COIC is of the view that the regulation in place is likely to be effective to assure the quality of training required in the public interest, though it also believes that there is a need for outcomes to be continuously monitored in order to ensure that the standard required by the public is maintained. COIC again notes the importance of the Pupil Supervisor training provided to ensure a high level of standard during this period of professional training.

Or are they the best possible training for those who will be our professionals of the future, already well-funded by those organisations benefitting from them?

133. COIC believes that there is not a sensible alternative means of ensuring the excellence in advocacy and specialist advisory services offered by the Bar, and required in the public interest, other than the provision of training in the form of pupillage in accordance with the regulations imposed by the BSB and monitored by the Inns of Court and the Bar.

<u>The 3 year rule and tenancy</u>

Even if the apprenticeship bottleneck disappeared, barristers would have to be selected for tenancies and solicitors would have to practice under others for 3 years before they could put up their own brass plate. Is this still necessary?

134. COIC does believe that the continuation of the 3 year rule is absolutely necessary to secure the protection of the consumer and the public, which would otherwise be exposed to an extensive risk of damage at the hands of barristers who might not be sufficiently experienced to be able to deal responsibly with all work which is attracted to them by the "brass plate". The importance of the support structure given by chambers to practitioners in their early years cannot be overemphasised as a critical safeguard. In addition, the New Practitioners Course that the Inns of Court and Circuits provide during this stage is critical to their development of skills and techniques. Recently qualified barristers need the benefit of working with those practitioners with experience before full exposure to the public on their own account. That experience should instil good working practices, good client protection measures and important ethical standards.

<u>CPD</u>

Is this one area where there is a broad consensus for reform?

135. There is a difference between a consensus that there should be some reform and consensus on the nature of the reform which should be made. The BSB is currently in the process of conducting a review of the regulations for CPD, and COIC is co-operating in the process. It will support any reforms and regulations which are brought into effect as a result of this process.

Is there particular agreement on the need to move away from input-driven approaches?

136. COIC believes that the SBAs should be consulted further in this area.

Is sufficient emphasis being placed on 'CPD' for the growing numbers and greater range of paralegal staff?

137. COIC does not have sufficient knowledge of this to be able to provide an informed response.

Mobility within the sector

Where are the key restrictions on mobility?

138. As explained in Section I above, there are restrictions upon mobility between the Bar and solicitors. COIC recognises that the restrictions should be kept to the minimum consistent with the maintenance of the Bar's high standards.

Are the pathways within and between occupational groups within the sector sufficient and sufficiently transparent?

139. COIC believes so, and will continue to monitor ways that the profession can remain open to all those with the capability of succeeding in it.

What more should be done to facilitate career mobility?

140. COIC does not consider that this question addresses a current need. Barristers do not, by and large, wish to leave their chosen profession, but if they wish to do so, they are highly employable on account of their training and experience. Those wishing to enter the profession must qualify through the Bar Transfer Test in the way set out in this Response. It would be unacceptable for the standards that must be met in that regard to be diluted in order to meet a perceived need for mobility, particularly given that the profession is so over-subscribed.

The paragraph 100 options

Abolition of the concept of a qualifying law degree?

141. COIC does not believe this would be a sensible step: it recognises the importance of a "sufficient knowledge base" before a person is permitted to practice at the Bar. The abolition of the concept and provision of an elaborate alternative is less attractive than making improvements to the QLD if agreement on specific improvements can be agreed.

The introduction of national assessments at the point of entry to the profession?

142. While basic legal knowledge might be able to be assessed in this way, it is difficult to see how this could be usefully done for prospective advocates. Through the BPTC and the Inns of Court Qualifying Sessions, students build advocacy skills necessary

for their future practice. Without this, COIC does not see how students would be able to prepare themselves for their professional stage and beyond.

The specification of sector-wide national standards for key areas of work, and a move to greater activity-based authorisation/regulation?

143. Given both the complexity and variety of cases a barrister might undertake, COIC does not believe that activity-based authorisation or modular-training is remotely adequate for the broad expertise that is required. This would not be in the consumer or public interest. COIC echoes this response by one of the Inns to the LSB's draft 2012 business plan:

> "There are considerable dangers in a system that focuses too strongly on encouraging function-specific legal services, to the detriment of broader professional legal application and knowledge. More holistic understanding of a given area of law is often required in a given case. The inability to appreciate and assess potential difficulties or future repercussions of certain legal decisions poses significant risks to consumers."[4]

Removal of at least some of the linear breaks and distinctions between 'vocational courses' and work-based learning, whether through the training contract, pupillage or paralegal experience?

144. COIC is not in favour of any such removal currently, for the reasons given in detail in Section F of this Response, but finds it difficult to respond further without any indications of potential structures or cost associations of implementation.

Facilitation of greater common training between regulated occupations, both course-based and work-based (insofar as that distinction is retained)?

145. Again, COIC is not in favour of any further common training, at least without a period of detailed investigation and consultation, for the reasons given in detail in Section I of this Response. In short, it would be an ever greater obstacle to mobility if those who wanted to be specialists were obliged to undertake the time and expense of training as generalists and then have to incur further time and expense to undertake the more specialised training.

Replacement of the pupillage/training contract with a more flexible period of 'supervised practice'?

146. While there may be benefits to more flexible pupillage structures, many of these already exist. For example, Treasury Solicitors may send their pupils to sets of chambers for part of their training. Apart from limited examples of this kind, however, COIC does not support such a change. The provision of one-to-one supervision and training for a period of twelve months is a highly advanced form of training, especially as it is now coupled with the advocacy and professional practice courses which pupils are required to attend.

147. Such a system would not work for a very large body of trainees; for the smaller number required for the specialist work of the Bar, however, it is a system to be cherished. COIC acknowledges the need for reviews of pupillage, and efforts are

[4] http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/pdf/inner_temple_bp_response.pdf

made to ensure consistency of standards. These initiatives are not, in themselves, any justification for abandoning the system in favour of a period of "supervised practice". On a practical note, it would be difficult to ensure that this would be sufficiently controlled.

Development of a sector-wide CPD scheme or alignment of schemes?

148. Decisions concerning CPD should be mindful of recent SRA and BSB consultations on this issue.