LEGAL EDUCATION AND TRAINING REVIEW

RESPONSE OF THE BAR COUNCIL TO

DISCUSSION PAPER 01/2012:

"Key Issues (1)"

Introduction

1. This paper is submitted by the Bar Council in response to the call for evidence made by the Review's research team in its "Key Issues" Discussion Paper 01/2012. The Bar Council expects that, as the Review proceeds, there will be further opportunities to offer its views on the issues identified in the Discussion Paper, and it will wish to do so. This Response is to be read as its initial observations on this important topic.

2. The research team conducting the review will know that the practising Bar comprises some 15,000 practitioners, of whom 12,000 are self-employed, working mostly in and from chambers in London and the regions. A small minority are sole practitioners working from their own office. The remaining 3,000 are employed as barristers, practising as such, by a number of different agencies in the public, private and third sectors. The high standards of knowledge, skill, independence and ethical conduct which are required of barristers are uniform throughout the profession. Education and training, from post-graduate training through the Bar course (now the BPTC) and pupillage, followed by compulsory training in the new practitioners' programme and CPD, are prescribed by the Bar Standards Board (BSB) for all holders of practising certificates, whether they are engaged as self-employed or employed barristers. The Bar Training Regulations and the Bar's Code of Conduct

are the principal documents which set out these requirements, supplemented by the BSB's Handbooks.

3. The statutory regulatory objectives of the Legal Services Act 2007 ("LSA") are helpfully recorded in para 43 of the Discussion Paper. They are objectives with which the Bar of England and Wales is closely identified. The Bar can demonstrate a long history of active promotion of all those objectives. It is self-evident that our system of education and training must be designed to support and further those objectives. It is equally clear that the content of education and training, and the techniques by which it is delivered, must always be kept under review and be susceptible both to the changing needs of society and to the evolution of our laws and legal practice.

4. The research team will also be aware of the various bodies at the Bar which are responsible for the oversight, delivery and continuing improvement of education and training for barristers. It is hoped that the team will gain a detailed insight into what the Bar Council considers to be a substantial collaborative educational project.

5. The BSB is the independent regulatory arm of the Bar Council, with its separate constitution. As stated above, it has a prescriptive role in deciding the amount and content of training which students, pupils, and new and established practitioners must undertake. It accredits the barristers who wish to act as pupil supervisors and the training organisations (chambers and others) who wish to take pupils; and it requires pupil supervisors to undergo training before they can be accredited. The Inns of Court and the Circuits deliver the training which the regulations require: qualifying training sessions for Bar students are provided by the Inns; and the compulsory courses which pupils and new practitioners must complete and pass are provided by both the Inns and the Circuits. These bodies also train pupil supervisors. The Inns train advocacy trainers. CPD for established practitioners is delivered by the Inns, Circuits and the many Specialist Bar Associations (SBAs) which concentrate on new developments in their specialist fields. Many of the SBAs provide tailored courses for pupils and new practitioners. The Advocacy Training Council (ATC) has been established as a committee of the Council of the Inns of Court (the Inns' discussion forum) to set common standards in advocacy and

advocacy training, and to take the lead in research into and the dissemination of best practice. The training guidelines issued by the ATC are followed and applied by the Inns and Circuits.

6. The entire body of training described above is delivered at no or very low cost, principally by senior barristers and sitting or retired judges offering their services free of charge. Each year some hundreds of trainers voluntarily support this enterprise throughout England and Wales. Solicitors, accountants and other professionals provide additional instruction. Each of the Inns has its own training department, led by a judge or senior barrister and a salaried senior executive. Each Circuit has a dedicated committee to organise training on circuit. The training offered by commercial providers, at very much greater cost, will overlap typically with the activities of the SBAs.

7. Before going further into the detail of this work the Bar Council invites the research team to take stock of English law, and our legal profession, as they stand at present. The Bar Council has read the paper submitted to the Review by the City of London Law Society dated February 17 2012 and is in broad agreement with it on this point.

8. English law, and its close cousin Anglo-American law, rank among the most advanced and sophisticated bodies of jurisprudence throughout the world. English law is applied with appropriate local modifications throughout the Commonwealth. It is the *lingua franca* of international trade. International commercial and construction contracts between foreign parties, of which the subject-matter has no connection with the United Kingdom, are written in English, with an English law clause applying our law to the interpretation of the contract. Disputes arising out of such contracts are routinely referred to the Commercial Court or arbitration in London.

9. The community of English lawyers is held in similar esteem. The City solicitors have spoken of the important transactional and litigation work conducted by their members. The research team will also be aware of the high international standing of our judiciary, particularly among its more senior ranks. Its reputation for integrity,

fairness, legal learning and independence are second to none. Senior judges are continually called upon by the Government to conduct public inquiries and other hearings into sensitive issues of public importance. The Bar plays a conspicuous international and national role in the field of advocacy extending far beyond appearances in domestic and overseas courts. Its services are in demand in tribunals, arbitrations and inquiries where rights of audience are freely available to all, and where it is in open competition with other professional and lay advocates.

10. The standing of the academic legal community must also be acknowledged. Apart from the teaching which it delivers to law students (which will be discussed below) it is responsible for a large and important body of legal research and writing. Many of the leading textbooks are written or edited by academic lawyers. Law journals flourish. There is close intellectual collaboration between the bench and practising lawyers on the one side and the academic community on the other. An increasing number of academic lawyers combine their academic work with legal practice.

11. The Bar Council does not suggest that the standard of professional performance of all members of the Bar, or of other members of the legal profession, is as high as it should be. There are serious and worrying examples of sub-standard work which sometimes lead to disciplinary proceedings or claims for damages for negligence. A great deal of time and thought is invested into addressing this problem. Recent examples of action taken at the Bar are the reviews and overhaul by the BSB of the Bar course and pupillage, now embodied in its recently published, new and detailed Handbooks, with which the research team will be familiar, as well as the BSB's production of a Joint Academic Stage Board Handbook. A review of CPD is under present consideration by the BSB. The Bar Transfer test is also being overhauled by the BSB, with another completely revised Handbook soon to go out to consultation. The issue of quality assurance of advocates in the criminal courts has also been addressed.

12. Nevertheless, this initial survey of the educational activities, achievements and standing of our lawyers does not point to the conclusion, advanced by some commentators, that our system of legal education and training is unfit for purpose

or, as it has been recently described by the Legal Services Board (LSB), fit only "for a bygone age." The Bar Council anticipates that the Review will dissociate itself from these ill-founded descriptions and hopes for a more constructive and collaborative dialogue.

13. Before setting out its responses to the Discussion Paper the Bar Council finally draws attention to two other pressing concerns which it has about the future for access to justice and for access to careers in the law. These concerns are fully acknowledged in the Discussion Paper, and the Bar Council wishes to emphasise them. First, the continuing decline in the availability of legal aid, and the remorseless reduction in the fees paid to lawyers conducting legally aided work, is bound to have a damaging effect on the vitality and viability of the profession, the ability of citizens to bring their legal disputes before the courts or to receive proper representation in court, and the courts' ability to deal with cases in a fair and efficient way. This issue is one of the Bar Council's current major preoccupations, and it has made the strongest representations to the Government about it. Secondly, it shares the research team's concerns about the increasing expense of higher education. It is feared that this will have a direct effect within very few years on the size and diversity of the pool of applicants for legal careers at exactly the wrong time, just when the substantial work which has been carried out by the Bar to improve career opportunities and to increase the diversity of its intake is beginning to bear fruit.

The Discussion Paper: focus of the Review

14. The Discussion Paper sends a mixed message as to what is the true focus of the Review. Para 4 states that the research team has been *"particularly tasked"* to make recommendations about a number of matters which can be summarised as the legal skills and knowledge which are currently and will in the future be required of legal practitioners, and the manner in which the relevant qualifications and skills will be acquired and maintained. Questions are also raised as to whether the regulation of legal education and training should be extended to groups other than those currently regulated by the three front-line regulators who are sponsoring the Review. By contrast para 12 states that "*the Review is not concerned with the intrinsic qualities of any*

stage of legal education and training as such. Its focus is on how the regulators might assure themselves and the public that those delivering legal services are competent to practise at both the commencement of and throughout their careers: competence is the legal basis for becoming and remaining an 'authorised person' under the LSA". This is followed in para 14 by the statement that "*The current LET regime arguably does not focus sufficiently on competence"* - a statement that the Bar Council would strongly challenge, at least so far as the Bar is concerned.

15. The Discussion Paper then opens up a number of issues, many of which relate to para 4 and not to para 12. Indeed para 12, taken by itself, could be read as a relatively short question leading to a fairly self-contained answer. However to ensure that this response covers, at least in outline, the approach of the Bar Council to the full scope of the Discussion Paper the issue of legal education and training will be taken first, followed by the issue of regulation.

The requirement of relevant skills, knowledge and experience: para 4

16. It should not be necessary to embark on this issue at length. All legal practitioners, whatever branch of the profession they occupy, and whatever their working environment, must have a knowledge of the law relevant to their work. There are well-recognised areas of law which may be regarded as core subjects with which all lawyers must be familiar. Just as all medical practitioners must understand human anatomy, so it can be said that all lawyers must have a working knowledge of the branches of law for which the seven compulsory subjects comprised in the Qualifying Law Degree (QLD) are a good proxy; and lawyers must know how to pick up and gain access to changes in the law. Furthermore, the relative importance of different areas of knowledge will themselves change. A simple backward glance will show that over the last decades new areas of law have emerged, or assumed much greater practical importance: public, European and human rights law are good examples. In the field of private law, employment law and the law of restitution can be cited. Then, beyond the core subjects, there are specialist areas of legal knowledge which practitioners must possess if they are to provide the required standard of service to their clients in the field in which they are working.

17. The same may be said of the skills which the public expects of all lawyers. Core skills include the ability to assimilate and analyse information and to read documentary material with a proper level of understanding, whether it is a legal instrument, correspondence or a law report. Clients, other parties with whom lawyers are dealing and the courts expect lawyers to be able to communicate with them in clear straightforward language, on paper and orally. Other skills are valued: the ability to see more than one side to an argument; an ability to understand and deal with clients with sympathy, understanding, courtesy and fairness; an aversion to the law's delays. Fluency in IT is important. Fluency in the English language is indispensible.

18. The Bar Council suggests that these basic knowledge and skills will or should be a common requirement of all lawyers, irrespective of the type of organisation in which they operate, and irrespective of the more specialist skills they will develop, depending on their field of practice. When the alternative business structures envisaged by the LSA become established, their clients are going to expect the lawyers working within them to possess the same standard of legal knowledge and professional skill, relevant to the work entrusted to them, which they have come to expect of lawyers working in a more traditional mode. The notion that lawyers working within the "new" environment will need different skills should be treated with some scepticism.

19. Much emphasis has also been placed in recent debates on the need for lawyers to possess business management skills. It is unquestionably the case that an efficiently run law office or chambers will provide a more speedy efficient and hopefully economical service to clients. But it is an open question as to whether, and at what stage in a lawyer's training, formal instruction in management should come on stream.

20. Some practical points arise. First, at the beginning of their careers young lawyers are unlikely to be entrusted with or even be involved in the management of a legal business, whether it is a private law firm, set of chambers or other structure. Much less are they likely to be entrusted with that task in the public sector. At that stage in

their development all the emphasis is on the acquisition of relevant knowledge and skill, and casework. It follows that, if they do receive instruction in business management during the academic or professional stages of their training, by the time they come to exercise those skills it is likely that the teaching they received will be out of date; and they may have forgotten it. Thirdly, in a profession in which there may be an increasing diversity of models of legal practice there will be no single type of business practice which will fit all cases. In many law firms now the management of the business, albeit overseen by a senior practitioner, is placed in the hands of business management professionals. Many barristers' chambers are now managed by a chief executive or director with business experience, acting separately from the clerks but answerable to the head of chambers or a committee. Since the practitioners carry the ultimate responsibility for the management decisions which are taken, they must have a clear understanding of what is done in their name. But these considerations point to the conclusion that the time for acquiring management skills arises after basic education in the law and early practice of the law have been completed, and when the demands of management become more real for the individual. At that stage appropriate training can and should be undertaken as part of CPD, reinforced if necessary by that person's relevant Code of Conduct.

21. Para 4 of the Discussion Paper also refers to the requirement of experience. It would be unhelpful simply to say that experience is gained over time. Experience is an important attribute of all practising lawyers, and can be picked up by observation and mentoring as well as the accumulation of one's own portfolio of work. The City solicitors have stressed the importance of traineeships in law offices. They regard them as an indispensable part of professional training, described as "the gold standard", and are not prepared to countenance the idea that a person can practise as a solicitor who has not undergone that essential formative experience. The Bar Council's approach to the issue of practising certificates at the Bar is exactly the same. Pupillage, learning by observing live cases, under the personal supervision of a practising barrister, is an essential formative experience in training. Moreover the mentoring and guidance of new practitioners at the Bar continues well after the end of the initial twelve months.

22. Jurisdictions which operate a different model, for example the United States, where attorneys may set up sole practices immediately after law school and the Bar exams, cannot offer this benefit. The research team may wish to consult the American Inns of Court – a national network of local law societies of judges and attorneys - to ascertain whether the practice in the United States serves the public interest or the proper administration of justice as effectively as the system operated in England and Wales.

The current structure of legal education and training

23. If the required knowledge and skills have been correctly listed above, at least in very broad outline, the next logical question is: how and when is the relevant training most effectively delivered, and by whom? The research team has raised a series of questions about the current structure, and has pointed to international comparisons which provide evidence of quite different systems of qualification; but the plain fact is that, at least so far as the three main regulated professions are concerned, we have an existing structure and well-established legal institutions; and while any system, including our own, can always be improved and refined it should not be overthrown and replaced unless it can be shown to be fundamentally flawed – a view which, for the reasons given above and below, the Bar Council does not support. Its comments on the different stages of qualification are as follows.

Academic qualifications

24. The Discussion Paper records that, since the Ormrod Report, entry to the Bar has been restricted to graduates, and entry to the solicitors' profession is mainly restricted to graduates, with the exception that members of the Chartered Institute of Legal Executives (CILEX) may also qualify. It also points out that, because of the rule that barristers must have university degrees, solicitors who are university graduates can transfer to the Bar but those who have qualified via CILEX cannot. There is a case in the modern context for reviewing the Bar's rule. The City solicitors emphasised that any alternative set of qualifications for their branch of the profession must be of a degree standard. The Bar Council agrees. The detail of possible further exceptions is worthy of further discussion; but it should also be pointed out that the demand for pupillage at the Bar is so far in excess of the number of pupillages available that

someone who had not undertaken study for a degree would be seriously challenged in a highly competitive market. The same may be true for solicitors.

25. To continue with the issue of university degrees, the next two frequently asked questions are whether all solicitors and barristers should have law degrees; and whether law should (as in the United States) be taken only as a graduate degree.

26. The Discussion Paper refers to the significant number of entrants to the profession whose degree subject is other than law. It is unnecessary to cite the numerous examples of historians, linguists, scientists and many others who have practised law with success and, in some cases, distinction. The Review cannot afford to lose touch with reality. To confine the profession to law graduates would have serious and quite unacceptable implications for school and university students. If they had an ambition to become a lawyer when they were at school they would be condemned to applying to university to read law, whatever their then academic strengths and inclinations; and applications for law school would soar, leaving large numbers of prospective lawyers disappointed. If they did not decide to become lawyers until they had already embarked on a different degree course, the decision would for most of them come too late. The corresponding disadvantage to recruitment to the profession would be significant. These simple considerations do not begin to take account of the value which the presence of graduates trained in different disciplines adds to the profession, which has been stressed by the City solicitors.

27. It is then suggested, as a possible answer to this argument, that a law degree can nevertheless be a compulsory requirement, but that it should be studied, as in the United States, as a graduate degree only, over a course lasting one or two years. That is no answer to the problem. Law is taught as an undergraduate subject, as an academic discipline in its own right, in more than 100 universities. There is no compelling reason why that body of academic endeavour and achievement should be dispensed with, and no realistic prospect that it would be. Secondly, the expense of a second degree course after the already high cost of a first degree would have a serious effect on recruitment. It would not survive an equality and diversity impact assessment.

28. The Bar Council's present view therefore is that the existing principal trajectory for barristers and solicitors – degree, Graduate Diploma in Law (GDL) if necessary, professional training course, and traineeship or pupillage in the workplace - provides a sound model. There is no evidence that a radically different model, such as that adopted in the United States, would be better suited to England and Wales or could, as a matter of practical politics, be introduced. There may be room for streamlining this model, by combining as some institutions do the QLD and the professional course and for the development of further exceptions within the framework, provided that the required standards of knowledge and ability are maintained.

Content of the academic course

29. The Discussion Paper raises as an issue the content of the QLD and (where it is not taken) the GDL. The Bar Council welcomes discussion of the question whether Professional Ethics should be added to the content of the course. This is treated as a separate topic below. It notes that the JASB has recently confirmed the content of the QLD and reserves the right to comment further if and when concrete proposals for change come forward. At present it takes the view that, provided the QLD requirements are observed, law teachers should continue to enjoy full academic freedom to design and develop their courses as they think fit. If they wish to include some professional training such as drafting, giving oral or written advice or advocacy they should be free to do so; but when doing so they should take some account of the professional training which students who are progressing to the professional stage will in any case encounter later, and attempt to avoid conflicts with it.

The professional training course

30. The Bar Council does not wish to comment on the LPC. So far as the BPTC is concerned, the recent thorough review, and the new Handbook to which it gave birth, represent the BSB's present position, which the Bar Council supports. It draws attention to the fact that the review was conducted, in great depth, by a highly qualified panel which concluded, despite criticisms of the type recorded in para 77 of

the Discussion Paper, that the course was valuable and should continue as a 30-week programme, but with a greater focus on the development of the professional knowledge and skills required for modern practice at the Bar. The pass level was also raised, and the proposal for an aptitude test at entry is still under discussion with the LSB. The research team will be familiar with the conclusions of the Wood report. The Discussion Paper does not contain any concrete proposals for changing the course. The Bar Council reserves the right to comment at a later stage, if and when proposals are made to amend the course and are available for discussion on their merits.

A common course

31. Any proposal that the LPC and BPTC should be combined into a single course is inconsistent with the recent changes made to the BPTC, approved by the BSB, which (as has just been stated) has been adapted to relate it more closely to the work of the Bar, in order to improve the knowledge and skills of those who have definitely opted to become barristers. The superficial attraction of a combined course is that it might allow some students to keep their options open: to wait and see in more detail what practice as a solicitor or barrister might be like, and perhaps (if it is practical to do so, and the timing works) to make parallel applications for pupillage and a traineeship.

32. There are serious countervailing problems and disadvantages. They include the design of the course itself. If it were to avoid a dilution of existing programmes – a real risk - it would have to allow for a large number of elective subjects within it to cater for the majority of students who know which career path they want to pursue, and which not, before they embark upon it. The research team has separately commented on the possibility that the LPC may be too "broken up". Any alternative course, to be acceptable to the Bar Council, would have to retain a substantial amount of practical advocacy training, to require detailed knowledge of criminal and civil practice and procedure, and to emphasise training in the conduct of litigation and dispute resolution. The role of the Inns of Court, and their relationship with students, would also have to be examined. Solicitors might be expected to prefer an entirely different programme.

33. If the object of a common course is simply to facilitate transfer between one branch of the profession and another, there are better ways of achieving it, tailored to the needs of those who wish to make such a move. Some restrictive rules recently introduced by the SRA would have to be revoked. It would be helpful to know how many practitioners actively seek to transfer. A major change in qualification to assist a small minority would need to be carefully and fully justified.

Pupillage

34. The quality and content of training in pupillage was extensively reviewed on behalf of the BSB in the second Wood report, and a detailed Handbook has been produced by the BSB, in response to that report, after extensive consultation. The importance of pupillage has also been stressed in paragraph 21 above. Training in pupillage, in the Bar Council's view, is of paramount importance in the development of professional skills and the understanding of professional ethics. The Bar Council would be opposed on public interest grounds to any derogation from the present system.

CPD

35. The principle of CPD, the different ways in which it can be undertaken, the most effective types of CPD activity and the way in which any system can be efficiently monitored are all discussed at length in the third Wood report to the BSB. The research team will have studied this report. It recognises that any CPD scheme must be responsive to the circumstances of the profession to which it applies, and that a balance has to be struck between a practitioner's discretion to select the type of CPD which suits and is relevant to the individual's practice and the need of a regulator to ensure that its requirements are met. The report supports the separate regimes at the Bar for new practitioners (barristers in their first three years of practice) and established practitioners. The BSB has again carried out an extensive consultation and it has yet to announce a decision as to what changes, if any, are to be made to the current regime for the Bar. The same issues are rehearsed in the Discussion Paper, in similar terms to the Wood report. The Bar Council records its view that any proposal to reduce or dispense with CPD would not be acceptable to clients or the public.

Subject to that it will respond to the BSB's decision when it is announced and to the Review's findings on the subject when they are published.

Advocacy training

36. It will be apparent from the information available to the research team about the volume and content of the training delivered by the Inns and Circuits, under guidelines laid down by the ATC, that training in advocacy, both oral and written, is one of the two central themes of the Bar's educational endeavours. The practice of advocacy is the hallmark of the Bar. It is what gives the profession its national and international reputation. The importance of effective advocacy in the courts and other judicial tribunals both to clients and to the proper administration of justice cannot be overstated. It is central to the efficient running of the justice system.

37. Advocacy is systematically taught to students, pupils and new practitioners according to well-tried and internationally accepted techniques. A higher standard of instruction will not be found elsewhere. In addition to the training delivered by the Inns and Circuits, as part of the compulsory training required by the BSB, many sets of chambers provide advocacy training to their own pupils, tailored to the type of work undertaken by the barristers in those chambers.

38. In paragraph 11 above it was acknowledged that not all barristers achieve the standards set for them. The Bar is not complacent about that, and continues to address the problem. The Inns have ambitious programmes for increasing the numbers of trained advocacy trainers. Advocacy is a skill that cannot be taught effectively by anyone who has not directly experienced the pressures, pitfalls and demands of regular appearance in court.

39. Our advocacy trainers are in demand throughout the world. Visiting lawyers come from around the globe, not merely common law countries, to participate in our courses, or undertake advocacy courses designed for them. Our trainers visit countries as diverse as Hong Kong, Mauritius, and Zimbabwe. Training was delivered last year in the Netherlands. The South-Eastern Circuit's annual course in advanced advocacy at Keble College Oxford attracts an international cohort of

trainees, many practising well above the level of new practitioner. The ATC has an international training committee, and its work at home and abroad continues to expand.

Professional ethics

40. The second central theme of professional training at the Bar is ethics. The Bar Council believes that the general standard of professional ethics at the Bar will stand any international comparison. The opening-up of this topic for discussion in the Review is welcomed. The teaching of ethics to Bar students, pupils and new practitioners has taken place over many years, and is being refreshed. First, instruction at the Bar may be said to have concentrated too much in the past on learning the Code of Conduct - a complex and important undertaking in itself - without looking at wider ethical questions such as the role of the lawyer and law in society, and the interaction between law, lawyers and the public. Secondly, until the Bar course was reformed, it was treated as an ancillary part of other legal exercises – opinion-writing, advising in conference or drafting a statement of case.

41. The second of these issues has been addressed. Ethics is now taught and examined as a separate subject within the BPTC. On the first, the ATC has set up a new research and development committee whose first topic will be a full examination of the teaching of ethics at a professional level. Any recommendations made by the ATC will be reflected in the courses delivered by the Inns and Circuits.

42. Whether the teaching of legal ethics should also form a mandatory part of the QLD is not a matter on which the Bar Council is qualified to comment. It depends on whether it can be given sufficient academic content to justify its inclusion in an academic course. The Bar Council is aware of work which has been done in this area, and will await the outcome of discussions within the academic community. If it forms part of the QLD it will also have to be fitted into the GDL; but neither of these outcomes will be likely to replace its being addressed again in post-qualification training at the Bar, through the medium of the Inns and the Circuits.

The regulation of legal education

43. At present the regulation of legal education and training at the Bar is in the hands of the BSB, with the LSB as its oversight regulator. While there may be some debate over the power of the LSB to override decisions made by the BSB, the reality is that the regime applicable to the Bar at present is derived entirely from the Bar Training Regulations, enacted by the BSB, and the BSB's Handbooks.

44. The straightforward answer to the question raised in para 12 of the Discussion Paper therefore is that the front-line regulator assures itself and the public that the standard of education and training at the Bar is adequate because it lays down the rules itself. Its activities are backed by its Education and Training Committee, comprising professional and lay members, and it has professional staff, supported by outside assessors, who regularly monitor and inspect the work of the BPTC providers, the work of BPTC examiners, and the courses provided by the Inns and Circuits. Regular meetings are held with all providers, and the providers of the BPTC attend an annual conference hosted by the BSB. This model should be reproduced across other sections of the profession, if it is not already in place.

45. The Bar Council is unable to agree with the suggestion made in the Discussion Paper that there should be a single regulator overseeing the whole of legal education. The value of the existing arrangement at the Bar is that the regulator is not remote from practitioners. In so far as it includes lay members it takes the trouble to understand the realities of practice. It is capable of taking swift, properly focussed and effective action when change is needed. There is a real dialogue between the regulator and the regulated. Moreover it must not be overlooked that the BSB is also the front-line regulator for disciplinary matters and has a role to play in the enforcement and relaxation of the rules for professional qualification, which involves a considerable amount of casework. Its remit also includes the accreditation of CPD courses and the approval of pupil supervisors and training organisations.

46. No useful purpose will be served by splitting the regulation of education from these other closely connected functions, and placing it in the hands of a single, large, unitary body. Such a body would be dealing with solicitors as well as barristers, and

in all probability legal executives and others. It would be overwhelmed with concerns for those much larger branches of the profession. It would be remote, unwieldy, bureaucratic and unlikely to be able to undertake the supervision of the Bar with the same degree of understanding and to the same level of detail as the BSB. It is also likely to be expensive to run. The BSB consults with the other regulators on educational matters. The accreditation of the QLD and the setting-up of this Review show how the system works. There is no need to change it.

Responses to para 98

47. The Bar Council summarises its position by responding to the various bullet points in para 98 as follows.

(1) The QLD as it stands is a good proxy for the scope of knowledge of the law which all practitioners must possess. The Bar Council does not make any proposals for change and will react to concrete proposals for change made by others on their merits.

(2) While the entry to legal careers for those who do not possess law degrees (or any degree) may at present be unduly restricted, any revised qualification must be of degree standard and be based upon the core of legal knowledge represented by the QLD.

(3) The Bar Council does not comment on the LPC. With regard to the BPTC it repeats para 30 above. The BPTC is intended to prepare students for pupillage, where they will undergo more rigorous and specialised training under personal supervision. It gives them a grounding in the practical (as opposed to academic) knowledge and skills which barristers must possess in practice upon which instruction in pupillage can be built. The suggestion that a course should be constructed which *"would also suit those who will not achieve pupillage"* implies that the present course, which in the case of every successful candidate leads to call to the Bar, has no or little value to the many who do not become pupils. The course providers and the Inns of Court would dispute this suggestion. It also opens the prospect that those who do achieve pupillage would not have the professionally focussed training which

the BPTC provides at present. This would undermine if not destroy the principal purpose of the course.

(4) The fourth bullet point contains muddled reasoning and barely disguised allegations of restrictive practices which are quite unacceptable. With regard to pupillage the points about numbers, fair access and quality assurance need to be taken separately. With regard to numbers, the Bar like any other profession or business will recruit the number of trainees it can sustain, taking into account both its capacity to offer training to a suitable standard and its perception of the future need for its services within the general market for legal services. With regard to fair access to pupillage, the Bar Council will be able to demonstrate more fully, and in a separate paper, the substantial work that it has undertaken and still undertakes in widening access to careers at the Bar, and the success it has achieved. The statement that existing professionals may be obstructing fair access, properly so-called, is rejected. As to quality assurance, the content and quality of pupillage is prescribed and closely supervised by the BSB, which also accredits supervisors (who must be trained as such) and training organisations. The final question in this bullet point is not understood.

(5) This bullet point runs together quite separate requirements for solicitors and the Bar. Barristers who wish to join chambers as tenants inevitably and obviously have to undergo a selection process. Those who wish to practise as employed barristers likewise have to compete for an appointment. There is nothing remarkable about this state of affairs. Once barristers have successfully completed pupillage and obtained a full practising certificate, they may not set up as sole practitioners until they have spent at least three years being supervised in chambers. The Bar Council considers that these rules operate in the public interest.

(6) On the question of CPD the Bar Council repeats para 35 above.

(7) On the question of mobility within the legal profession, it would be helpful to have some data on the size of the demand for transfer between different

branches. Subject to that there is a case for proportionate reform, provided that professional and ethical standards are not compromised.

Conclusion

48. The responses set out above also contain sufficient comment on paras 99-101 of the Discussion Paper. The Bar Council's overall and concluding comment is that this Discussion Paper and the research group's Discussion Paper 02/2012 on Equality and Diversity both exhibit a tendency to stress the need to construct a system of education and training which will maximise career opportunities for all who wish to practise as lawyers and appear relatively less concerned with the need to maintain high professional and ethical standards. The Bar Council's prime concerns are with the quality of the service which lawyers deliver to clients and the proper administration of our justice system. Both are in constant need of review and improvement; and a fair system of access to careers in the law will assuredly promote both of those objectives. Much work, as has been pointed out already, has been done in that area. But it would be a matter of public concern if the qualifications, formal and informal, which are required of all practitioners in a demanding and challenging profession were traded off against a policy of widening access to an extent which would excuse some recruits from the standard of education and training now in place.

30 April 2012