

# LEGAL EDUCATION – A COMMON START FOR EVERYBODY.

## Summary

**This paper (originally prepared in a slightly different form for circulation in Gray’s Inn) sets out my views on the urgent problem of providing a fair career opportunity for everybody who wants to join the Bar and has the ability to succeed. Such an opportunity does not exist at the moment for a large number of would-be entrants. I believe that the regulators are well aware that the very large fees charged by the course providers and the shortage of places for pupils restricts fair entry to our branch of the profession. I think that it is in the public interest that the regulators take urgent steps to remedy the situation. I do not believe this can be done without radical re-thinking of the way we recruit into the profession as a whole (ie both branches). That is why I welcome the Review being undertaken by LETR and have submitted in this paper a proposal for fundamental change – i.e. a common start for everybody who wants to join the legal profession.**

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## **1 A common start**

I believe that the number of practitioners at the ‘self-employed Bar’, ie those of us who practice from chambers, (which is now well over 12,000) is far greater than the number of barristers needed to provide advanced advocacy skills or expert advice on the law. At the same time the number of students paying the course providers to sit the Bar Professional Training Course but who have no chance of obtaining a pupillage has become a matter of scandal. My solution (which I appreciate will cause anguish amongst some of the ‘course providers’) is that we should phase out the Bar Professional Training Course over the next three years and replace it with a professional examination to be taken by *all* would-be practitioners whether they want eventually to be advocates

and legal experts (i.e. doing the work barristers now do) or work as solicitors. All lawyers should begin their careers as salaried employees in ‘law offices’ (which expression I use to include barristers’ chambers, solicitor’s offices, the CPS, in-house legal departments in commercial concerns and the new ‘alternative business structures’ that are being established). At any time after three years as ‘trainee lawyers’ they should be able, if they wish, to take an intensive (optionally part-time) course run by the Inns of Court leading to being called to the Bar. The result will be that entry to the barristers’ profession will become limited to advocates with at least some real experience and to legal advisers who have begun to acquire real specialist knowledge and the Inns can properly require the Ministry of Justice and the Legal Services Commission to recognise this by restoring exclusive rights of audience and paying proper remuneration to members of the Bar. It is fundamental to this scheme that the Inns will retain their traditional responsibility for the teaching and examination of persons who wish to opt for a career at the Bar.

## **2 Plan for entry to Bar**

<b>Stage 1</b>	<b>Law degree or pass at Graduate Law Course</b>
<b>Stage 2</b>	<b>Common Course for all lawyers (QAS1 rights)</b>
<b>Stage 3</b>	<b>Training in Law Office (chambers, solicitors office, CPS, ABS etc)</b>
<b>Stage 4</b>	<b>Any time after 3 years lawyer can opt to join Inn of Court and study for Bar. Special provision should be made for lawyers who have joined a solicitor’s practice and gained over many years great experience in their chosen field</b>
<b>Stage 5</b>	<b>Intensive Bar Course covering ‘advocacy, skills and ethics’ and procedure and evidence in detail and two optional subjects applicable to chosen area of work</b>
<b>Stage 6</b>	<b>Call to Bar by Inn of Court (QAS2 rights)</b>

### 3 The key figures

The figures in 2009/10 (and there is no reason to suppose they are different now or not representative of the recent years) are:

About 1,500 enrolled on the Bar Professional Training Course

The fees charged by the law schools differ substantially - from about £ 15-16,000 in London to in the region of £ 10-11000 outside London where courses are linked to teaching organised by local university faculties

The courses can be taken full-time (over one year) or part time (over two years) but the fees charged are usually the same. [

About 500 students intend to practice overseas.

The remaining 1000 students wish to practice in England – either at the ‘self-employed Bar’ (ie in chambers) or at ‘the employed Bar’.

Less than 500 will obtain pupillage in chambers or in the Employed Bar- ie get their feet on the first rung on the ladder.

**This means that every year 500 students (for whom the Inns of Court are responsible) will have each spent £ 10-16,000 and qualified for Call but will not be able to work as members of the Bar. The course providers will have received in the region of £ 7 million in fees from these students.**

It would be a considerable service to all who are interested in a new scheme for entry to the Bar if LETR could ascertain and publish as an interim paper, a note setting out the income and main heads of expenditure and gross profit of each of the course providers.

This information would be of value to intending students and to the benchers of the Inns of Court who properly have the right to know that they are getting fair value from the employment of their scholarship funds.

#### **4 The first stage common course for all barristers and solicitors**

My first proposal is for a ‘common course and a common examination’ for all lawyers.. it should correspond broadly to the course now taken by solicitors with practical teaching of the key subjects such as civil litigation, costs, alternative dispute settlement, basic criminal procedure and evidence. I think the fees on the present Bar Practical Training Course compared with the fees charged at Oxford and Cambridge (£9000) are disgraceful.

#### **5 The problems chambers now face**

Chambers from which the ‘self-employed’ Bar practices vary greatly in the work they do and the remuneration of their members. This is significant if one is considering a restructuring of entry to the Bar. I would broadly divide up chambers as follows:

- a the top grade specialist sets dealing, for example, in commercial, company, construction, defamation, and government work for the Treasury Solicitor. Under the system I propose, some newly qualified lawyers could opt to start their careers as properly paid ‘trainees’ in commercial sets (which would count as ‘law offices’ for this purpose). But I do not see that as becoming the norm. A lawyer wishing to work in these areas could not fail

to profit from spending three or more years with a City firm before joining the Bar.

- b criminal sets - the members of these sets vary enormously in reputation and ability. At the top end there are chambers which provide outstanding service to their clients. They have very few pupillages available to newly qualified but inexperienced students. But lawyers wishing to join them *after* a spell of three years or more having gained experience with *good quality* criminal defence solicitors or at the CPS would be at a very considerable advantage. At the lower end of the scale there are sets with young members doing criminal work who are already finding it hard to earn a living and whom I suspect will not be able to practice when the full force of the restrictions on public funding are applied. Nicholas Green (Chairman of the Bar in 2010) calculated that young criminal practitioners of about five years call (after deduction of all expenses) can expect to earn between £35,000 to £ 42,000). ;
- c family sets - exactly the same comments apply to practitioners in family work as those above in respect of criminal sets;
- d 'the common law sets' - these are sets where members (working within 'practice groups') do a considerable variety of work (often very skilfully but for inadequate remuneration). Forty years ago there were many such sets because members of the Bar were expected to be able to appear and advise in cases of many different types. The 'common law bar' as it used to be has now largely disappeared. In order to survive very large chambers have been formed providing 'lockers' and 'hot desks' and conference rooms with groups of barristers covering distinct areas of work. These sets are the most vulnerable from the financial position.

The scheme which I propose could go a long way to solving the pupillage problem.

Everybody would take a common examination and so would be equally acceptable as

paid assistants in chambers, solicitors' offices the government legal service and commerce. I have not room in this note to discuss the impact of new structures (e.g ASB's and ProcureCos but these new options for the public will provide fresh opportunities for the Bar and the lawyers involved (who should, if they wish, be welcome as members of the Inns). Nor have I space to deal with the possibility that my scheme will impact adversely on those seeking training contacts with solicitors - but I firmly believe that most solicitors will welcome a plan which provides for far greater recognition of how the two limbs of the profession are inter- connected without going so far as proposing 'fusion' (which I think most people do not want).

## **6 When to choose to go to the Bar**

By the time young lawyers have spent three to five years in a 'law office' they will have a much better idea of their skills (and weaknesses). In the Lord Upjohn lecture in November 2010 the Legal Services Board Regulator, David Edmonds said:

‘[Baroness] Ruth Deech commented eloquently this year [at the Conference on the Future of the Bar] that it was odd to force students into specialisation decisions at the age of 20 or 21, before they really understand the demands of different branches of the profession and have the maturity to understand their own fitness for them. I agree with that analysis.’

One of the objects of my proposal is that young lawyers should not be forced to make these critical decisions before they have real experience and understanding.

## **7 Training for the Bar**

I envisage the Bar Course (supervised by the Inns and senior academics from the universities) providing :

- (a) a rigorous 'skills training course' taught by practitioners *and*
- (b) the means of acquiring in-depth knowledge of the areas in which aspirant members of the Bar wish to practice.

I would like to see this being undertaken in part by a new Inns of Court Law School in London which will (as in former days) be run by the four Inns (under overriding control from the Council of the Inns of Court). Those who run the course will be able to ask for assistance from Judges and Silks with special knowledge in the areas the students intend to specialise in. I would certainly envisage that the universities out of London presently teaching the BPTC to a very high standard should be authorised to teach much of the new course at their own centres.

The course will last at least six months full-time or may be taken on a part time basis while the students continue to work at their Law Office. But (full-time or part time) it will involve long hours in the evenings and at weekends and seminar courses in the Vacations. If the students are not prepared for this sort of hard work, then they should not consider going to the Bar – because it is what life is really like for a successful barrister.

## **8 Fairness**

I have been left with an uncomfortable feeling that the present Bar Professional Training Course involving half the successful student body not obtaining pupillage is

discriminatory and unfair. I agree there are a number of students who mistakenly join the Bar Professional Training Course who could never succeed. But I believe that is a very small percentage indeed and not an excuse for tolerating what is happening to the vast majority of the 500 who cannot find pupillage. I would echo the well-known words of Lord Neuberger's Committee :

It is not only unfair if access to the Bar is much more difficult for someone with these attributes wanting to become a barrister, if he or she comes from a disadvantaged group. It is also damaging to our society and our culture. That is partly because any palpable unfairnesses or inequalities would undermine respect for, and confidence in, the Bar. It is also because, if the pool from which candidates are selected is small, then many of the most able people will be prevented from being barristers which results in a less effective Bar as a whole. Of course, the inherently unequal nature of many aspects of our society, notably in education, financial means and social background, may well mean that it is impossible to ensure a completely even playing field for everybody. However, that is no excuse for not seeking to improve the present situation as much as is possible. Indeed, it underlines the need to do so

## **9 Overseas Students**

My proposals envisage 'Call to the Bar' being deferred until the Bar Course and training in a legal office has been completed. I would expect special provision being made for overseas students (who traditionally have formed a very important part of the student body at the Inns of Court). The Bar already provides an important service to the UK economy in that members regularly appear and advise in overseas jurisdictions. This happens in part because overseas lawyers trained in the UK recognise the quality of representation and the integrity of the Bar. One possibility is for an intensive Bar Course for overseas students lasting perhaps 6 months after which they will become 'licentiates' of their chosen Inn. They will be entitled to be called to the Bar once they have

completed three years in a lawyer's office at home and will then have exactly the same qualification (and at the same time) as their contemporaries in the UK.

### **My own background and experience**

I am a Bencher of Gray's Inn and sit as a Recorder. Until I retired last year, I had been Standing Counsel to H M Customs and Excise and later the Revenue and Customs Prosecution Office for twenty years. Before that I had a very mixed common law practice - in the sense that I undertook both civil and criminal work. I combined this with teaching at the Inns of Court School of Law, eventually becoming Reader in Civil and Criminal Procedure. I have continued to be involved in further education and was on the Bar Council Committee which set up the CPD scheme. In recent years I have specialised in the recovery of the proceeds of crime. I have lectured widely on this subject and recently organised a 'workshop' for senior financial investigators and CPS lawyers. I am writing a book on the Money Laundering Regulations.

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