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## YOUNG BARRISTERS' COMMITTEE

### **Response to the Legal Education and Training Review**

#### **Discussion Paper 01/2012**

##### **Introduction**

1. The Young Barristers' Committee ("YBC") is one of the main representative Committees of the Bar Council. Led by a Chairman and Vice-Chairman, it comprises elected members of the Bar Council (employed and self-employed barristers) under seven years' Call as well as barristers who are co-opted to ensure representation from different practice areas and all Circuits. Its membership is therefore diverse and representative.
2. This is the YBC's response to the Legal Education and Training Review's ("LETR") Discussion Paper 01/12.<sup>1</sup> The YBC has seen and considered the Bar Council's main response to this Discussion Paper and agrees with the views expressed in it. The purpose of this response is to offer constructive input into the evidence based methodology adopted by the LETR from the perspective of junior practitioners who have recently completed their legal education, whether they are now self-employed or employed, in privately-paid or publicly funded practice.

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<sup>1</sup> <http://letr.org.uk/wp-content/uploads/2012/03/Discussion-Paper-012012.pdf>

## Our Approach

3. The YBC notes the findings of various existing reports and enquiries on such matters as entry to the legal profession and the Bar, including the report of the Bar Working Party on entry to the Bar of November 2007 led by Lord Neuberger of Abbotsbury (“the Neuberger Report”); the review of the Bar Vocational Course of 2008 led by Derek Wood CBE QC (“the Wood Report”); the final report of the Panel on Fair Access to the Professions of July 2009 led by Alan Milburn MP (“the Milburn Report”); and the report prepared by Dr Jennifer Sauboorah for the Bar Council in December 2011 entitled “*Bar Barometer: Trends in the Profile of the Bar*”.
4. The Milburn Report noted that the Neuberger Report had made recommendations on changes to selection and recruitment procedures<sup>2</sup> in connection with legal education and training. Membership of the Milburn Panel also included representatives of the legal profession, notably Lord Neuberger himself and Geoffrey Vos QC. The Milburn Report noted further that the legal profession had “taken the initiative” through the Neuberger Report in making plans for fair access to the profession.<sup>3</sup>
5. The YBC firmly agrees with the conclusions of the above reports on fair access for LET, and in particular the comments of the Neuberger Report at paragraph 20:

*Barristers are in one of the most high profile of the professions and should lead the way, and be seen to be leading the way, in promoting equality of*

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<sup>2</sup> Milburn Report, p. 23. Available at: <http://webarchive.nationalarchives.gov.uk/+/http://www.cabinetoffice.gov.uk/media/227102/fair-access.pdf>

<sup>3</sup> Milburn Report, p. 116.

*opportunity and professionalism. Further, as much as any other profession, it is ability which attracts success at the Bar. Additionally, members of the Bar advise and represent all members of all categories of society, often in relation to a crucially important issue in their lives. Finally, and uniquely, it is from the ranks of barristers that the majority of Judges are selected, and, to maintain a high level of public confidence, the pool from which such selection is made (and indeed the judiciary itself) must be as diverse and inclusive as possible.<sup>4</sup>*

6. In the spirit of this approach, the YBC now considers the thoughts of the LETR in the discussion paper. We do not comment on the content of the LPC and the SRA requirements for training contracts.
7. The YBC notes the groups and representatives who have been interviewed by the LETR and who have taken part in the focus group discussions (paras 19 & 20). We invite the LETR to broaden its approach and to invite the YBC or other groups of young barristers to take part in its interviews, discussions and meetings.

### **Response to the LETR Discussion Paper 01/12**

8. The YBC generally endorses the proposition that recommendations for change must, so far as possible, be evidence-based, although would caution this general approach by suggesting that from time to time certain principles (such as the regulatory objectives) ought to determine what recommendations, if any, are made, either where there is no evidence basis or, exceptionally, contrary to such evidence as there may be.

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<sup>4</sup> Neuberger Report, p. 17. Available at:  
<http://cms.barcouncil.rroom.net/assets/documents/FinalReportNeuberger.pdf>

9. The YBC is of the view that the current legal education and training (“LET”) arrangements are fit for purpose and has not seen any evidence to demonstrate the contrary, although that is not to say that there is not scope for improvement. Certainly we query the assertion in the discussion paper (para 14) that the current LET regime does not focus sufficiently on competence. In our experience, this is the minimum standard on which the BPTC and pupillage are focused.
  
10. One of the YBC’s key concerns about the BPTC is the high level of fees charged, now compounded by the increasing cost to students of higher education. The YBC is concerned that these financial burdens may restrict access and have a corresponding effect on the diversity and quality of entrants to the profession. For many, the cost becomes a huge personal debt that continues to burden many junior practitioners for years, especially in light of the constant downward pressure on the fees paid to those carrying out publicly funded work. For those who take the GDL, the costs are greater still and for all students there are the additional living costs of an extra year of study, usually in London. The YBC would welcome proposals that will reduce this high cost.
  
11. The YBC is not convinced that there is any proper basis for fusing the LPC and the BPTC into one common course. It is difficult to see what advantage would accrue from such a change, other than allowing students to delay the moment at which they choose which branch of the profession to join. There does not appear to be any evidence to indicate the extent to which this is a real problem that requires addressing; and, if there is such a problem, the YBC considers that there are likely to be other ways of assisting such individuals, such as facilitating movement between the two branches. The YBC is greatly concerned that a fusion of legal professional education may increase the cost of such training and would produce an unwieldy course,

which would insufficiently focus on the specific skills required by barristers, such as advocacy, drafting and the development of professional ethics.

12. The YBC shares the concerns of the LETR as to the number of potential entrants to the legal profession set out at paragraph 70. The real issue here is the 'bottleneck' that occurs at the time at which pupillage is sought. The YBC welcomes endeavours to ensure that only the best candidates with a real aptitude for the work of a barrister should be allowed to commence (and incur the cost of) the BPTC. In this respect, the BSB's proposals to introduce an entrance test are to be welcomed.
13. One possible way to reform the BPTC and pupillage, which might reduce the cost of the BPTC and shift the bottleneck from pupillage to the pre-BPTC stage, is for the BPTC to be wholly or partly combined with pupillage. The YBC would welcome the LETR exploring this possibility. Many of the skills taught and learnt on the BPTC are only truly developed during pupillage. Combining classroom based learning with practical on the job experience could make a real difference to the quality of the training.
14. Another possibility is to reduce the length of the BPTC, perhaps by limiting it to the summer between the end of the academic year in June or July and the commencement of the legal year in October (or even the next calendar year in January) or by interweaving it subsequently with pupillage as is the case with other professions (e.g. accountancy).
15. The YBC notes what is said to be the competitive disadvantage of the London legal service market generally against the New York Bar exam 'gold standard' set out by the LETR discussion paper at paragraph 82. Yet the London legal market appears to thrive in spite of this competitive disadvantage. The cost of completing a law degree at American universities far exceeds British ones; so it may be that the costs of the American system

are not truly comparable. London is the forum of choice for the resolution of international contractual disputes, and English law is the law of choice as well, whether disputes are resolved by arbitration or in court, as seen in the *Berezovsky v. Abramovich* trial.

16. The comments concerning CPD are noted. The YBC's view is that CPD is undoubtedly necessary but it must be effective. In particular, the new practitioner programme undertaken in the first three years of practice should be more closely related to practitioners' actual experience and requirements. However, CPD already represents a considerable burden and we are of the view that the present requirements should not be made more onerous. We have responded to the BSB's recent consultation on CPD in this regard.
17. The YBC does not agree with the suggestion that the academic stage of LET should be abolished, and the YBC echoes the Bar Council's response in this regard. It is important that all lawyers are taught the fundamental elements of the law. This invaluable training will stay with them through their careers even after they have specialised in a particular area. We do not perceive any real advantages to making changes to the current requirements.

#### **Specific Comments on Paragraphs 97 to 101**

18. A number of suggestions and questions are posed in paragraphs 97-101 of the discussion paper. The YBC responds as follows.
19. As noted above, the YBC is of the view that the Qualifying Law Degree is still fit for purpose and, moreover, is essential in preparing all lawyers (and especially aspiring barristers) with black-letter knowledge of core legal

subjects. The YBC believes that outcomes should not be redefined in terms of cognitive and other skills. What is important is the content of the law degree and the knowledge base it provides future practitioners. However, a possible change might be to include Procedure as one of the core subjects, thereby enabling the BPTC to be reduced in length (and cost) and to focus solely on the vocational skills necessary for practice.

20. The YBC is of the view that, given the enormous increase in numbers attending university and the increased standards required of practitioners, a law degree or GDL should remain a compulsory requirement.
21. In addition to the comments above concerning the BPTC, the YBC considers that some form of professional training should precede pupillage so that pupil barristers have some grounding in the core skills required for practice. However, there may be scope to adapt the BPTC and pupillage that would benefit students and reduce the cost.
22. The YBC is concerned at the allegation that pupillage represents a bottleneck controlled by the profession that prevents fair access. As the Bar Barometer report indicates, of those entering the profession as new tenants, the numbers of men and women are almost equal and the proportion of BME people exceeds that in the population at large. Whilst there is always more than can be done to ensure that greater numbers of women and BME individuals join (and remain in) the profession, the evidence does not indicate that fair access is being prevented. Ultimately, the number of pupillages will be determined by chambers' need for new tenants, which in turn will be driven by their business requirements. As it is likely that the profession will reduce in size in the years to come, then the number of pupillages and tenancies is also likely to reduce or at best remain static. That having been said, the YBC believes that pupillage remains the best

method of training new barristers and gives chambers the opportunity to establish whether their pupils are truly suited to the work of the profession.

23. The three year rule requiring barristers to work in chambers for their first three years in practice is essential, in our view, to protecting the interests of consumers and supporting the strength of the legal profession because it ensures that junior practitioners are able to benefit and learn from the continued support and wisdom of older and more experienced colleagues.

### **Concluding Remarks**

24. The YBC welcomes this opportunity to participate in the LETR and we look forward to working with the LETR in the future.

**Young Barristers' Committee**

**May 2012**