

**Response of 5 Essex Court Pupillage Committee to the BSB’s Consultation
“Engagement Programme – Pupillage Gateway Timetable and Written
Agreements for Pupillage”**

Introduction

1. This is a response on behalf of 5 Essex Court’s Pupillage Committee to the Bar Standard Board’s consultation entitled “Engagement Programme – Pupillage Gateway Timetable and Written Agreements for Pupillage”.

2. 5 Essex Court provides pupillages and is due to become an Authorised Education and Training Organisations (‘AETO’) when the scheme starts. Our Pupillage Committee has considerable experience in selecting and training pupils. In 2018, it won Legal Check’s inaugural award for “Best Chambers for Training”. It was also shortlisted for LexisNexis’ 2019 “Diversity and Inclusion” award. We regularly speak to groups of aspiring pupils at different stages of their training. We believe that we are in a good position to comment on some of the matters that are raised by the consultation paper.

Summary of response

3. We agree that there should be a universal compulsory timetable, in line with that of the Pupillage Gateway, for AETOs. We will be able to comply with the proposed timetable for the next round of recruitment. We anticipate that other pupillage providers/AETOs should also have sufficient time to comply. We agree too with the proposal of a 14-day deadline for candidates to accept offers.

4. We agree that there should be a written agreement between AETOs and pupils about how the pupillage will run but that there needs to be sufficient flexibility to take into account different pupils’ and chambers’ requirements. We have commented on some of the proposed terms below.

Gateway Timetable Proposal

5. The BSB is proposing to introduce a requirement, by way of a condition of AETO authorisation, that all pupillage recruitment must be in line with the Pupillage Gateway timetable.

6. We agree with this proposal for the following reasons:
7. At present, AETOs which recruit pupils outside the Pupillage Gateway are not bound by the Pupillage Gateway timetable. In our experience, it is common for those chambers to make offers just in advance of the Gateway deadline and to demand a decision from the applicant prior to the Gateway deadline. We have found that chambers who adopt this approach are rarely, if ever, willing to extend their deadlines.
8. As identified at paragraph 7 of the consultation document, this leaves applicants in a very difficult position. They can either accept the offer they have in hand but lose the chance that they might be successful in their other outstanding pupillage applications (which might include their first choice of chambers or practice area). Or they can take the gamble of rejecting the offer in the hope that they will be successful elsewhere. Given how difficult it is to obtain pupillages, applicants rarely feel sufficiently confident to take this second option.
9. Whichever decision they take, the applicant does not have a fair opportunity to assess their options and make an informed choice having received all of their offers. We think this fails to support the principle of accessibility. We agree that this is likely to have a particular impact on those from less advantaged socio-economic backgrounds. Further, it is not in the wider profession's interest for applicants to gamble on whether to accept an offer made early and forego the opportunity to pursue their preferred choice. We also do not consider that it assists with retention in the longer term for applicants to miss the opportunity of practising at their preferred set of chambers and even in their preferred area of law.
10. Obtaining pupillage is already a competitive and stressful process. It tends to take place alongside the BPTC exams. We are concerned that the current system places further undue pressure on some applicants.
11. We agree that the current system also disadvantages chambers who operate within the Gateway and are constrained by its timetable. We think, however, that the detriment to applicants far outweighs the detriment to chambers. Although the consultation notes

that having a mandatory application window will mean that chambers who have a growth period will need to wait before recruiting, we consider that this problem can be resolved by the recruitment of third six pupils or seeking to apply a waiver in exceptional circumstances.

14-Day Deadline

12. The BSB also proposes introducing a 14-day deadline for applicants to communicate acceptance of an offer. We support the proposal.

13. We agree that the introduction of a 14-day deadline for applicants to communicate acceptance of an offer would be helpful. If AETOs were constrained to the same timetable but could impose shorter timescales, this could disadvantage applicants in a similar manner to that set out above. Although it will not resolve the problem of successful applicants waiting until the deadline and pressure being brought to bear on those on reserve lists, we still consider that this would be an improvement on the status quo.

Compliance

14. As a member of the Pupillage Gateway, we are able to comply with the Gateway timetable from November 2019. We consider it feasible that non-Gateway chambers should also be able to comply because, in many cases, it will involve a delay in their process rather than bringing it forward. For those who have to bring the process forward, we consider it is likely that there is a sufficient lead in time to allow them to comply.

Written Pupillage Agreements

15. The BSB is proposing to introduce a mandatory requirement for written agreements to be drafted and signed upon commencement of pupillage. We also support this proposal.

16. At present there are no requirements for any sort of written agreement between pupils and chambers. Before the start of their pupillages, we provide our pupils with a Pupillage Handbook setting out what pupils can expect from their pupillage and

identifying to whom they can turn should they experience any difficulties. That aside, we do not currently have any formal written agreement. Regardless of whether this proposal is implemented, we intend to introduce a formal written agreement for future pupils.

17. We can see the benefit to pupils and chambers of such agreements. It will assist both parties to understand better what is expected of them and, with the assistance of the proposed boilerplate example, will hopefully improve the consistency of pupillage experiences across the Bar. It will also give both parties some formal recourse in the event of either side breaching the agreement. We consider it important that, as is proposed, AETOs be permitted to add to, amend and tailor these terms.
18. One note of caution we think worth sounding is that care must be taken to ensure that the introduction of these agreements does not inadvertently create an employment relationship between pupils and chambers: the agreement should be an educational/training agreement not a contract of employment. We trust that those working on this proposal will give or have given this consideration to ensure that it does not happen.

Annex A: Proposed outcomes for pupillage written agreements

19. We have reviewed the proposed outcomes. In general, we consider that they are appropriate. We would however make the following suggestions:
 - a. Under Training Programme, the second bullet provides: ‘Which pupil supervisor will supervise the pupil in the non-practising and practising periods’. The same provision appears under Agreement terms at paragraph 21. This will be problematic to provide to pupils at the outset of their pupillage (which is the stage at which we think the agreements should be signed) because second and third seat pupil-supervisors are decided during the course of the year. Although we are aware that some larger chambers do allocate pupil supervisors at the start of the year, we are a small chambers with a limited cadre of trained supervisors. We decide on which pupil will

go to which supervisor based on a number of considerations, some of which are only evident during the pupillage year; for example: which areas of law are of particular interest to the pupil; what is in the pupil supervisor's diary (it might not be appropriate to allocate a pupil to someone who would be out of chambers for long periods or is working on one long-running case or inquiry); the pupil's progress and how much input it is anticipated they will require. We would therefore ask that this provision be removed or clearly be indicated as optional.

- b. Under Training Programme, the third bullet provides: 'How the pupil will be supervised in the non-practising and practising periods, including a minimum amount of contact time'. We do not consider it possible to be prescriptive about minimum amounts of contact time. These will vary day-by-day and week-on-week depending on what is happening in chambers which will often be unpredictable. We would therefore ask that this provision be removed or clearly be indicated as optional.
- c. Under Certification of completion, there is only reference to the final assessment of the pupil against the competencies in the BSB's Professional Statement. There is no mention of the stage at the end of the first six where chambers must confirm that the pupil has satisfactorily completed his or her first six. We think this should be covered in the same terms as the final assessment and provision should be included to cover what is proposed where the pupil fails to complete their first six satisfactorily.

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