

[DRAFT]

RESPONSE OF THE ASSOCIATION OF LAW TEACHERS (ALT)

TO THE

CONSULTATION PAPER ON DEFERRAL OF CALL TO THE BAR

The ALT represents a substantial number of teachers of law in both old and new university law schools, as well as in further education. The members are mainly engaged with the academic stage of education, but a significant minority are associated with Bar Vocational Courses. In addition, while the ALT does not have a systemic record of this, a number of members are themselves barristers, whether non-practising or fully qualified by pupillage.

This response will focus on the first question, whether in our opinion call should be deferred, as the other questions are both contingent on this and also to a considerable extent matters of operational detail on which we, as outsiders to the Bar, are less qualified to speak.

Question One

The ALT is unaware of any evidence that the public has been disadvantaged by improper activities by those called but not qualified to practise at the bar. If such activity exists, it can be dealt with by existing disciplinary rules (as those called are amenable to such discipline) or in extreme cases by the criminal law of deception.

The relationship between the completion of academic and vocational studies and entitlement to practise is a complex one. For example medical graduates obtain provisional registration to complete the clinical part of their training as house officers. Within the EU, for instance, lawyers in France, Belgium and the Netherlands are 'called to the bar' before undertaking a period of supervised practise, while in Sweden and Finland full membership of the bar is only available to those with significant prior experience of legal employment, as well as an academic qualification. There are therefore European precedents for the equivalent of call to be followed by a probationary or further training period. Although there is a discrepancy with the solicitor's profession, this reflects the fact that the qualification of the latter was historically an apprenticeship, while education for the bar always included an element of academic education provided by the Inns or more recently other providers. In any event, the English legal system is so riddled with anomalies and inconsistencies of a historical nature that it seems quixotic at best to treat this one as a basis for significant reform. Furthermore, the current proposed changes to the qualification process for solicitors will again change the balance.

We therefore do not see any great force in the positive arguments for call, while recognising that the present position lacks a little in clarity and coherence.

We do however see great force in two arguments against deferral of call.

The first is that provision of BVC places substantially exceeds the capacity of the profession for pupils and new tenants. Completion of the BVC presently leads to the possibility of employment as a non-practising barrister in many contexts, including solicitors' firms, academia, government service and in-house legal departments. This is clearly a factor in the decision to undertake the BVC. All attempts to limit BVC numbers closer to the capacity of the profession have failed, and as the profession rightly wants an element of choice of potential pupils, there would in any event be some who could not be placed. Even therefore accepting that the primary purpose of the BVC is to provide new recruits to the practising profession there is an inevitable mismatch of supply and demand. It is inevitably those students with fewer resources and contacts who are likely to be concerned at the financial implications of doing the BVC and not getting privilege, and downgrading, actually or apparently, the worth of the BVC itself will be a deterrent to them, to the detriment of diversity within the practising bar.

Furthermore, reduction in demand by deterring some students would threaten the diversity of provision if providers could not attract economically viable cohorts of students.

The second argument relates to the significant number of overseas students. We understand that only a small minority of these actually require to qualify as barristers in their home jurisdiction, so the majority are attracted by the reputation and prestige of a secondary qualification. As they do not intend to practise here, they clearly do not need to complete the training requirements for those who do. If they subsequently wish to practise here, then if they do not qualify under EC free movement provisions, then the application of the 'three year rule' would appear to be an adequate safeguard.

Deferring call and disentitling these students from using the title 'barrister' would be a significant deterrent. These students not only contribute significantly to the viability of BVC courses, but they bring a range of experiences and insights to enrich the overall experience of the BVC. They also contribute to maintaining the influence of English law globally.

We therefore consider that the arguments against deferral substantially outweigh those in favour, although some changes in practice may nevertheless be desirable.

Question Two

Clearly some means of indicating that a practitioner is not fully or unconditionally licensed to practise is desirable, whether or not call is deferred. 'Trainee barrister' is the most appropriate expression; it is accurate, clear and unpretentious. If call is to be deferred, such trainees would need to be provisionally or temporarily called (effectively as now happens in France, Belgium and the Netherlands) until they are certified as having completed all training requirements. If call is not deferred, the use of the title pending certification of the completion of training requirements will be sufficient to regulate the position.

Question Three

If call is to be deferred, some recognition of the successful achievement of the outcomes of the BVC, which of course include substantial advocacy, drafting etc skills as well as substantive and procedural knowledge, must be provided.

We do not favour the use of ‘pupil’ or ‘trainee’ barrister to achieve this. They are inaccurate, and, when applied to persons who are actually established practitioners in another jurisdiction or experienced in work in a law firm, in-house or in government service, they are demeaning and condescending.

All present BVC providers (with the exception of BPP, whose application for degree awarding powers is still pending) could award an appropriately designated degree or diploma, which can be supplemented by a diploma from the Inns in respect of their ‘qualifying sessions’ (Diploma in Advocacy Studies might be an apt title). This would avoid the problem described in para. 48 of the consultation, as there is no restriction on the award of diplomas. Alternatively, the Inns could apply for the additional powers to award a different degree qualification.

There is no ideal designation for such a qualification. ‘Post-graduate Diploma in Legal Practice (Bar Studies)’ is precise but long-winded.

Question Four

If call is to be deferred, consideration should be given to postponing full call (i.e. the ending of temporary/provisional call) until all initial training, including that now required in the first three years of practice, is completed. This is again analogous to the position in France, Belgium and the Netherlands, and reflects the position in Sweden and Finland and other European jurisdictions where the full professional title is only conferred on fully trained and experienced practitioners.

Although it is strictly beyond the scope of this consultation, consideration may have to be given to the types of experience which can be counted towards pupillage. This is analogous to the proposals at present being considered by the Law Society to allow work and other experience outside a formal training contract to be assessed to permit qualification as a solicitor. The training and experience in a foreign jurisdiction referred to in the consultation paper are an obvious example, but experience of litigation and advocacy obtained in a law firm or with the CPS would also have to be considered. Just as with the Law Society proposals, this could impact positively on diversity and equality of opportunity. It would also reflect the approach mandated by the Morgenbesser decision when considering applications from EU nationals seeking to have their prior education and training assessed.

Question Five

We feel that this question is best addressed once a decision has been taken on the principle of deferral, and on the nature of the ‘fall-back’ qualification.