



This is the response of the Bar Council's **Education & Training Committee** to the Bar Standard Board's request for feedback on its proposals relating to the pupillage recruitment timetable and written agreements for pupillage.

### **Summary of Response**

1. The Bar Council's Education & Training Committee (The Committee) agrees with the proposal to require AETOs to advertise and recruit pupils according to a common timetable, to match that of the Pupillage Gateway, subject to the ability to apply for a waiver and subject to a review after, say, two years of operation of the mandatory timetable.
2. A 14-day period for acceptance of offers is too long: 7 days would be preferable.
3. It is completely unrealistic to expect AETOs which do not currently recruit through the Gateway to be ready to comply with the Gateway timetable from November 2019.
4. The Committee agrees that it would be helpful for pupils, pupil supervisors and AETOs to have a written agreement setting out their respective obligations. However, caution is required, given that such agreements would have contractual effect, and the importance of not overburdening AETOs by regulation to the extent that they cease to offer pupillage.
5. As regards the proposed terms which should be included in a written pupillage agreement, those terms in Annex A shown in plain text are unobjectionable but we

question the appropriateness of those shown in italics, which go beyond existing regulatory requirements.

## **Gateway Timetable Proposal**

### The Principle of a Mandatory Timetable

6. The starting point for analysis should be whether there is a good reason, consistent with the BSB's regulatory objectives, for imposing rules on AETOs about the timetable by which they invite and administer pupillage applications. The Committee considers that there is. Without regulation in this area, AETOs compete for the best talent in various ways. Some AETOs compete by recruiting earlier than their competitors, particularly (but not exclusively) their competitors who recruit through the Gateway. Others do so by imposing very short deadlines by which offers must be accepted – so-called “exploding” offers. The result is a fragmented system which is difficult to navigate, stressful and in which we consider applicants without social capital are likely to be disadvantaged. Consequently, we believe that a common timetable seeks to achieve the regulatory objective of having an independent, strong and diverse legal profession.

7. However, given the potential impact of a mandatory timetable on AETOs' perceived ability to compete in the market for pupillage applicants, we consider it to be important that the BSB can robustly justify the imposition of a common timetable as being consistent with its regulatory objectives. We propose that the BSB commits to a review, say two years after the introduction of the changes. At this review the BSB should not only sample the views of AETOs and the profession but also those who have applied through the system (whether or not successfully).

8. The BSB has proposed the potential for a waiver. We strongly agree that waivers should be available where departure from the compulsory timetable is consistent with regulatory objectives. We anticipate that some AETOs for employed barristers may in particular have good reason for departing from a common timetable.

For example, we are aware that the GLD and CPS recruit pupils and trainee solicitors in a single recruitment round which does not involve quotas for either profession, which is likely to promote diversity. Moreover, it may be appropriate for waivers to be given to allow some smaller AETOs to recruit after the end of the Gateway timetable. However, we would not be in favour of a general waiver for the employed Bar, or indeed a lax test for waiver. If it is seen to be relatively easy to obtain a waiver, then the basis of the common timetable will be undermined.

9. The Committee has endeavoured to ascertain the views of the profession on the BSB's proposal. All AETOs offering pupillages in the current recruitment round (identified from their advertisements on the Gateway and whether or not they use the Gateway for applications) were asked for their views by email on the BSB's proposal. Of the 205 AETOs surveyed (split almost equally between those who use the Gateway to recruit and those who do not), 21 organisations recruiting through the Gateway and 20 organisations not recruiting through the Gateway responded. Of the AETOs recruiting through the Gateway, 100% agreed or strongly agreed with the imposition of a common timetable. Of the AETOs which do not recruit through the Gateway, 25% agreed with the imposition of a common timetable and 60% disagreed or strongly disagreed, with 15% being neutral. The results are set out in Appendix A, together with comments received, both negative and positive, about the BSB's proposals.

10. It is unsurprising that there are different views across the profession about the proposal for a common timetable, given that some AETOs consider that there is a competitive advantage in recruiting or offering outside the Gateway timetable (and other AETOs consider themselves to be commensurately disadvantaged by adhering to the Gateway timetable). However, the results of the survey do suggest a majority of the profession would support the imposition of a common timetable, with even a quarter of those AETOs which do not currently choose to use the Pupillage Gateway for recruitment being in agreement with the proposal.

### Pupillage Start Dates

11. There is nothing in the BSB's paper to suggest that any limitation is proposed to be placed on the date on which pupillages can commence, and we agree that there should be no imposition of a common timetable for the commencement of pupillages. In particular, we consider that the widespread practice of offering pupillages to pre-BPTC candidates (so that offers made in mid-2019 are for pupillages to commence in Autumn 2020) is beneficial for social mobility, as it enables applicants to secure pupillage before committing to the expense and time of the BPTC and encourages AETOs to support those they have recruited, financially and otherwise, during their BPTC year. On the other hand, as can be seen from the comments in Appendix A, some AETOs welcome the flexibility to recruit pupils to start immediately.

### The Proposed Timetable

12. As regards the proposed timetable itself, the current Gateway timetable (set out in paragraph 4 of the proposal document) was introduced in 2017. Prior to that, Gateway applications opened in late April and offers were made in August. There were three key problems identified with that timetable. The first was that for many applicants, interviews clashed with academic examinations. The second was that some applicants did not find out if they had offers of pupillage until after they had become obliged to commit themselves to large sums of money by way of BPTC fees. The third was that Chambers outside the Gateway were generally recruiting from January, thereby increasing the prospect that applicants would miss the opportunity to apply to non-Gateway AETOs by virtue of gearing up for an application period commencing in April. The Bar Council recently convened two focus groups with a view to improving the Gateway, one comprising applicants who have used the Gateway and another comprising AETOs using the Gateway for pupillage recruitment. Their comments on the BSB's proposals are recorded at Appendix B. As can be seen from those comments, there has been some unhappiness expressed with the current Gateway timetable, with the applicants' group expressing the view that

the application window (a month) is too narrow and the Gateway Chambers' group preferring the old timetable or an earlier start to applications. As regards the former, reintroduction of the previous timetable would in the Committee's view be a retrograde step given the first and second issues identified above (the third would be removed by a mandatory timetable). As regards the latter, whilst some adjustment to the timetable could no doubt be accommodated, an earlier closing date for applications risks disadvantaging GDL students (who have only a limited time as it is to explore areas of law before making pupillage applications) and those applicants from less advantaged backgrounds who rely on the events organised by the Inns during the Autumn term to prepare themselves for making pupillage applications. The Bar Council is very happy to discuss with the BSB any adjustments to the Gateway timetable which are consistent with meeting the various competing considerations.

#### 14-day Period for Acceptance of Offers

13. The BSB proposes a 14-day period for acceptance of offers. It will be seen from Appendix B that both the applicants' and the Chambers' Gateway focus groups expressed the view that the period should be shorter, namely 7 days. We agree that 7 days is more appropriate. There is a balance to be struck between allowing applicants sufficient time to consider and respond to offers and enabling AETOs to know that an offer has been rejected so that they can offer to reserve candidates who are waiting to hear. Given that applicants will know the window during which offers will be made, they can be expected to make themselves available to receive them and to have carried out the necessary research in advance to make speedy decisions.

#### Requiring Compliance from November 2019

14. We do not consider it remotely feasible to require compliance with the Gateway timetable from November 2019. Many AETOs plan their recruitment programmes well in advance and will be unable to prepare adequately for a change which would be announced only 2-3 months before implementation. There is a risk that some may

not offer pupillages in 2019-2020 if faced with change for which they consider they have not had time to prepare. AETOs which recruit later than the Gateway timetable are likely to be particularly affected by a mandatory timetable commencing much earlier than they are expecting. Effecting the change in November 2019 may also prejudice AETOs which would wish to apply for a waiver, given that they may not have sufficient time to make that application and for it to be properly considered and determined before pupillages are advertised.

## **Written Pupillage Agreements**

### The Principle of Written Pupillage Agreements

15. We agree that it is helpful for AETOs, pupil supervisors and pupils to have easy reference to document(s) setting out their respective obligations. This is likely to help ensure that AETOs, pupil supervisors and pupils are aware of their obligations and to prevent or reduce disputes, should difficulties arise. This is in the interests of AETOs as much as pupils and pupil supervisors.

16. Under the current regime, rules and guidance relating to the conduct of pupillage are brought together in the Pupillage Handbook and AETOs are required, as a condition of authorisation, to have a Pupillage Policy document setting out particular terms and conditions relating to pupils at that AETO as well as other policies (Pupillage Handbook para. 14.4.4). Consequently, the Handbook and policies, taken together, enable pupils, supervisors and AETOs to find all the relevant obligations.

17. A move away from the Pupillage Policy model towards written pupillage agreements requires careful consideration, given the different legal effect of each. Pupils and AETOs are in a contractual relationship: see *Edmunds v Lawson* [2000] QB 501. Breach of a contractual term would be actionable by or against the pupil and sound in damages, injunction (and perhaps, though exceptionally, specific performance). Where the pupillage contract is unwritten, no doubt many of the

provisions of a Pupillage Policy would form implied terms of the pupillage contract (see *Edmunds v Lawson* at [23]), but it is not necessarily the case that all provisions of the Pupillage Handbook or policies would form contractual terms. By requiring a written pupillage agreement to be entered into and dictating terms which must be included in it, the BSB is potentially opening up pupils as well as their contractual counter-parties (see footnote 3) to additional civil liabilities. Caution is therefore needed.

18. The Committee is also concerned that overburdening AETOs with regulatory requirements may lead some, particularly at the publicly-funded bar, to stop offering pupillage altogether, with all the impact on equality and diversity that would entail.

19. However, on balance, the Committee supports the proposal to introduce written pupillage agreements, given that the contractual effect of a written agreement may concentrate AETOs' minds on their responsibilities to pupils and help provide clarity to pupils about expectations of them. The Bar Council has evidence, through calls to the Pupils' Helpline, of some examples of very poor, indeed abusive, treatment of pupils. Some instances of behaviour towards pupils are truly shocking and indicate a complete failure on the part of the AETO to appreciate the nature of pupillage and their responsibilities towards their pupils. Other callers have expressed concern about such matters as not having been provided with adequate training in their expected area of practice, not being given the opportunity to attend Court, pupillage awards, expenses and use of email. A particularly difficult issue arises about responsibility for pupils when a Chambers dissolves and the Bar Council has evidence of recent examples of pupils being left with no clear alternative to continue their training upon dissolution of the Chambers.

20. However, it must be recognised that requiring AETOs to enter into a written agreement is not a substitute for effective enforcement action on the part of the BSB. The most egregious examples of poor treatment of pupils are already a breach of rules, such as Rule rQ36 of the BSB Handbook, relating to adequate training. We anticipate

that the AETOs concerned do not have Pupillage Policies, or do not abide by those they do have and would be interested to understand more about the BSB's experience of ascertaining breaches of, and enforcement of, existing rules through spot-checks and risk-based assessment. The difficulty as the Committee sees it is not primarily the absence of a written document, it is the weak position in which the pupil finds themselves to complain about the breach. Our experience through the Pupillage Helpline and otherwise is that it is understandably difficult to persuade a pupil to make a formal complaint about their treatment to the BSB and we cannot see that having a written agreement would make them any less reluctant. Nor would a written pupillage agreement between a Chambers service company and a pupil resolve the difficulties associated with Chambers dissolution, although a written agreement with a Head of Chambers might possibly assist.

#### Proposed Terms of Written Pupillage Agreements

21. Regarding the specific provisions set out in Annex A, the terms which simply reflect existing or proposed regulatory requirements (and which are shown in plain text) are unobjectionable. These provisions simply reflect the rules which apply to barristers and their pupils in any event. Requiring a written pupillage agreement to include these terms serves to remind AETOs, pupil supervisors and pupils of their obligations, identifies the source of those obligations and reduces the scope for dispute.

22. We have more difficulty with the proposed terms which go beyond regulatory requirements (shown in italics). The provision and conduct of pupillage is (rightly) heavily regulated through the BSB Handbook, Authorisation Framework and Bar Qualification Manual. The presumption should be that it is inappropriate to impose requirements on AETOs, breach of which may result in sanction as well as civil liability, on matters on which the regulatory materials are silent. It would of course be open to AETOs to add additional terms as they see fit, but we cannot see the justification for them being required to do so.



## Timing of Obligation to enter into Written Agreement

23. The BSB proposal is that the written agreement is to be drafted and signed upon commencement of pupillage (paragraph 16). There are three difficulties with this proposal. The first is that the contract of pupillage is legally made upon acceptance of the pupillage offer: the AETO cannot introduce new terms subsequently. The second is that under this proposal the pupil cannot compare terms of different offers at the time of choosing to accept one. The third is that the pupil does not have clarity about the AETO's expectations before commencing pupillage.

24. The Committee's suggestion is that AETOs' offers of pupillage should be required to state basic heads of terms (e.g. start date, amount of pupillage award and dates for payment, holiday entitlement, etc), and otherwise incorporate the AETO's standard pupillage terms which must be available to the prospective pupil on their website or on request. The heads of terms are unlikely to be onerous to produce, as they are matters which should form part of the advertisement of pupillage, whether or not the AETO recruits through the Gateway. Both parties would then sign the heads of terms upon acceptance of the offer. This method would enable pupils to evaluate the terms on offer from different AETOs in advance of entering into a binding contract and have clarity on their rights and obligations from the moment they are committed to the pupillage.

**Education & Training Committee**  
**31 July 2019**

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## Appendix A: Survey Results

Pupillage Gateway Users’\* responses to the question “To what extent do you agree or disagree that those recruiting new pupils should be obliged to follow the Pupillage Gateway timetable?”

Response	Number of responses	% of total PGW users
Strongly agree	20	9.8%
Agree	6	2.9%
Neutral	3	1.5%
Disagree	3	1.5%
Strongly disagree	9	4.4%
No response	164	80%
Total	205	100%

\* The Bar Council asked those who used the Pupillage Gateway platform to manage their recruitment process and those who just used the Gateway to advertise pupillages (i.e. all chambers who recruited in the 2018/19 period)

### Breakdown of responses

Response	Sets recruiting via Gateway		Sets <u>not</u> recruiting via Gateway	
Strongly agree	95%	20	0%	0
Agree	5%	1	25%	5
Neutral	0%	0	15%	3
Disagree	0%	0	15%	3
Strongly disagree	0%	0	45%	9
Total	100%	21	100%	20

### Breakdown overall

Response	Sets recruiting via Gateway		Sets <u>not</u> recruiting via Gateway	
Strongly agree	19.8%	20	0%	0
Agree	1%	1	4.8%	5
Neutral	0%	0	2.9%	3
Disagree	0%	0	2.8%	3
Strongly disagree	0%	0	8.7%	9
No response	79.2%	80	80.8%	84
Total	100%	101	100%	104

## Comments on common timetable

### For

"... up until the point of waiting for each potential pupil to have the opportunity to find out which chambers they receive offers from is fair so they can weigh up all their options without feeling pressured into accepting the first one they get."

"Our position is that we are adversely affected by the inconsistency in the timetable. Out of 12 second round candidates this year, 3 of them cancelled either the day before or on the day of the interview as they have received offers from providers outside of the Pupillage Gateway."

"This has been an annual problem. This year, for example, we had 6 candidates withdraw from the interview process as they had accepted offers of pupillage elsewhere during that time frame. From memory two from our final 12 for second round interview, meaning that they were made offers of Pupillage elsewhere the week before the Gateway offer date."

"I can see the benefits of a uniform timetable in the recruitment process that is designed to minimise pressures put on both candidates and chambers for competing pupils."

"We advertise on the Gateway rather than process our applications through it. There would be greater resistance to any requirement, if proposed, to process all applications through the Gateway"

"This was raised at our last Chambers meeting and it was a concern to the extent that we are discussing leaving the gateway system if it is not changed, due to the fact that so many high-quality candidates

### Against

"As a criminal set, which mainly does publicly funded work, we are unable to make decisions to recruit pupils more than a year in advance. We are also relatively small and the pool of work available to pupils and junior tenants changes quickly. We therefore need greater flexibility in when and how far in advance we recruit pupils. For example, recently we had made an offer only for the prospective pupil to pull out (we suspect because he was offered a better deal elsewhere). As a result, we brought forward our timetable to fill the gap and to preserve continuity: one pupil in first six and one in second six."

"We ... use the Pupillage Gateway for advertising only. We then in turn create our own timetable for the sift and interviews, we also inform our candidates within a week of the interview whether they have been successful or not. I am more than happy with our arrangement and do not want to be forced into a timetable to follow to fall in line with those Chambers who have used the Gateway for applications."

"A centrally controlled timetable will adversely impact candidates from low-income backgrounds. This is a scenario we experienced first-hand this year. We hold our competition in January and February. This is earlier than lots of other sets. One candidate whom we interviewed said that she could not afford to attend interviews if they were all in one month because of the costs of travel and work commitments at weekends. She explained that her monthly wages could not sustain it. If there is a central controlled timetable, then it is inevitable that all sets will be interviewing in the same month. Further to the above, a centrally controlled timetable will mean

withdrew because they had been offered pupillage elsewhere, in some cases before we had even had a chance to offer an interview."

"The current system is unfair to those sets using Pupillage Gateway who lose applicants to those non-Gateway sets who make early offers, and it is also unfair to the applicants who might have their hand forced by an early offer from a chambers that isn't their first choice rather than waiting to see the outcome of all their applications. "

"It is manifestly unfair on sets who seek to provide clarity and transparency to applicants by using the Gateway if there is not a level playing field. Applicants are often placed in an invidious position by an early gazumping offer from a non-Gateway set, when that set is not their preferred choice but provides early certainty. "

"We think that this is only workable if there are proper sanctions for those who fail to comply."

"I think it is only fair to all pupillage applicants that the same timetable is followed regardless of the use of the Gateway and I feel strongly that all chambers should be obliged to follow the Pupillage Gateway Timetable."

"We thought that harmonising the pupillage timetable would be fairer for everyone and therefore desirable.

that interviews will be condensed over two or three weekends, which means that candidates who are invited to attend multiple interviews may not be able to attend them all. It would be an outrage for candidates to work so hard and invest huge sums of money to miss their chance of pupillage because they cannot make it to every interview they are offered.

It won't work. Chambers will make offers formally or informally, the latter being open to abuse, misinterpretation, undue revocation and will cause stress to all concerned. Although informal offers may be banned, they will still be made.

Chambers should be free to advertise, interview, offer and recruit when it needs. More control from the regulator is unnecessary and only stifles the autonomy of Chambers.

A rigid timetable imposed top-down through the Gateway will create more work for Chambers - if we want to step outside the gateway to run a competition based on urgent business need then we would have to apply for all sorts of waivers. At present we can run a competition when we choose and can do so flexibly."

"We strongly disagree because it limits our ability to be flexible. As a small predominantly legal aid set it is not always possible to offer pupillages at set times. An inflexibility in advertising will inevitably mean we are more cautious in our approach. If we might want a pupil we are likely to not take one of we are restricted in this way, whereas being allowed to advertise any time would allow us to wait 2-3 months and then the might could become a will.

3 of our last 4 pupillage competitions have been outside the standard timetable. Please do not do this. You will reduce the number of opportunities for students."

“A level playing field; all candidates know when they need to apply to chambers; in smaller chambers such as ours having the flexibility to recruit at different times of the year when there is no fixed timetable”

“We take this view because i) this would enable a level playing field for both pupillage providers and pupillage applicants, and ii) this would provide clarity to applicants by having just one timetable with which to comply.”

“The current situation does not create a level playing field and it must make life very difficult for prospective pupils when multiple offers are made.”

“I think having a set system/protocol for all Chambers would be good way forward as it would promote fairness for both Chambers and candidates.”

“We are in the Gateway and find that several of those who apply to us withdraw part-way through the process because other chambers (whether in or outside the Gateway we don't know) make offers to those applicants and tell them they have to accept or decline the offer, before the offer date under the Gateway. Obviously, this puts enormous pressure on those applicants to accept the bird in the hand rather than risk declining it and not receiving another offer, even if they would prefer to go to other chambers. This is not fair on either them or us and is unlikely to promote diversity and inclusion.

We are considering leaving the Gateway unless it is made compulsory to be in it, and not to make any offers prior to offer day. This would be a matter of enormous regret

“As a small Chambers we struggle to ensure the availability of those who volunteer to complete the recruitment process to commit to a fixed timetable process, simply to accommodate diary commitments.

In addition, given our size we have, in the past, sought to delay commencing advertising pupillage in order to assess the outcome of applications for grants which we successfully obtained in 2013 and 2014. Obviously, the bodies offering the grants have their own timescales which we have to accommodate.

Finally, we find that aligning with the Pupillage Gateway timetables only encourages applications from prospective pupils who appear far keener to keep their options open by making blanket applications and, by the time they are offered an interview, have secured pupillage at their preferred establishment so are no longer interested in a small regional set.”

“We cannot compete with larger chambers and set our timetable to coincide with when larger chambers will have made their offers of pupillage. It would be a waste of our time to interview people who will choose a bigger set but who have not yet learned who is offering them pupillage. What is the benefit of one timetable?”

“We would not have been able (except by some exceptional process) to recruit the two pupils we have this year without having flexibility. Peoples circumstances, and those of chambers, vary, change and mutate. There are too few opportunities for pupils as it is, and, for no apparently good reason, the proposal is likely further to reduce places when they are at a premium. Please do not impose restrictions which will not

because it is obvious that the Gateway is the fairest system for applicants. But we cannot continue to invest huge time and resources in shortlisting applicants, only to have more than half the shortlist drop out before we are able to make anyone an offer."

serve to increase or promote diversity and opportunity."

"[We offer] an employed pupillage and therefore we have to go through a slightly different process internally with regards to budgets and sign off etc.

I understand most chambers deal with their recruitment of a pupil nearly a year in advance which is something that we simply wouldn't be able to comply with. We have to keep our budget under constant review and must ensure we have the adequate staff and supervisors prior to even advertising for a pupil. There is usually a lot of movement internally of lawyers within the departments and a limited number of pupil supervisors so logistically this can something be difficult.

We continue to look for one pupil a year and therefore would hope our views would be taken into consideration." *[Anonymised]*

Comment from a current pupil: "Perhaps because I am a pupil, I do not understand why there is resistance to this, particularly from Chambers who recruit later in the year and who as a result often miss out on good candidates."

## Comments on written pupillage agreements

### For

"We absolutely support the use of written agreements for pupillage. We have been using agreements for a few years now and find that issues around expenses, pay due dates and expectations around the giving of notice at the end of pupillage (for those who are offered but do not intend to take up tenancy as we are fortunate enough to have considered each pupil we have taken on since 2013 meriting a tenancy but anticipate it would work well should we need to give notice of rejection) have given clarity and managed expectations."

"We [are] in broad agreement as to minimum standards of written pupillage agreements and parts of your draft already reflect the content of our own pupillage handbook that we seek to adhere to, update and provide to new pupils."

"In simple terms, yes there should be compulsory written agreements. I would ask that the wording of those agreements is also set by the Bar Council, so that they are consistent. I note in the consultation that the framework would be provided, but that Chambers can then add their own wording."

"I also think that chambers should have written agreements for pupils. We sign a contract with our pupils before they start which incorporates most of the information proposed. We also provide them with copies of the relevant chambers policies."

### Against

"We do not feel it is necessary to introduce compulsory written agreements for pupillage arrangements – we comply with requirements in the BSB Handbook and have our own Pupillage Policy and related policies including harassment and grievances which are made available to the pupils and we don't feel the need to add to this."

In so far as compulsory written agreements are concerned, we do not see the need for them. We have never had them, and all our pupils have been happy and have gone onto tenancy. It is an extra layer of administrative burden which may put some off recruiting. "

"...this would be fairly onerous when with good communication, both parties would know where they stand in any event"

"We do not feel strongly about the proposal for written agreements for pupillage arrangements on the basis that we consider that we already meet such standards. But broadly speaking we are not enthusiastic about further granular regulation at that level (particularly where the more basic point about a standardised application process has not been resolved)."

"We did not see any advantage in the compulsory written agreement proposal and possible disadvantages (certainly in terms of an increase in red tape). All the key elements are already mandated by regulation, and any chambers not dealing

"This sounds sensible, but it would depend on the terms."

"I do believe that there should be a written agreement between Chambers & Pupils that they are required to remain at Chambers for a certain period of time after a successful Pupillage and not use Chambers as a stepping stone to other avenues. Successful Pupils should be made to remain with your Chambers for a term of 5 years and if they are leave before that period repay back to Chambers any monies paid by Chambers to them for their Pupillage with us. it would be taken into account if you were to leave Chambers due to personal reasons such as Child/Family related issues etc."

"In relation to our thoughts about 'compulsory written agreements for pupillage arrangements', [we fully support] the concept of compulsory written agreements for pupillage arrangements in the interests of fairness and transparency." *[Anonymised]*

"A written agreement is a good idea, on the proviso that all chambers are using the same basic format"

"Written pupillage agreements are a [good] idea."

"As far as written agreements are concerned we have not had any issues to date that make me feel it would be particularly helpful, but if they are made mandatory a specimen agreement for Chambers to adopt should be produced."

sensibly with the rest shouldn't be authorised in the first place."

"In relation to written agreements, we would be opposed to a set agreement that applied to each pupillage. We currently have terms set out in our constitution which our pupils follow as well as the BSB requirements. I can see that certain minimum requirements could be made standard such as the guaranteed payments, holidays etc. and I could see that a pupillage provider should draw up an agreement with pupils it is training but the content (apart from that already referred to) should be a matter for the chambers and pupil themselves."

"Also, regarding written arrangements, pupillage providers already have to satisfy certain criteria and be approved, further 'red tape' seem a little over the top. We did not offer pupillage for approximately 5 years because of the perceived red tape burden.

These demands will disproportionately hit smaller sets and dry up the market for offers of pupillage."

"With regards to written arrangements our pupil is considered to be a fixed term contract and therefore has a written agreement prior to the commencement of their training. This proposed change would not really affect [us]" *[Anonymised]*



## Appendix B: Focus Group Views

### Gateway Users' Focus Group (Students)

*Tuesday 4 June 2019*

Participants were asked:

1. Do you think that the annual pupillage timetable ought to be mandatory;
2. Do you think that giving applicants 14 days to consider an offer of pupillage is reasonable; and
3. Do you agree with the Bar Standards Board's proposal to introduce written pupillage agreements?

### Summary of Focus Group Responses

1. The current Gateway application window is quite narrow, and participants feel that this has a negative impact on both the quality of their applications and their academic work. Additionally, many Gateway users are in full-time employment, which further limits how much time they can commit to making applications. It was suggested that if the recruitment timetable is enforced then it ought to be lengthened, thereby assisting with scheduling practicalities and reducing any stress or anxiety felt by applicants during the recruitment process.
2. Making the timetable mandatory would help to mitigate against 'exploding offers', reducing the strain on applicants' mental health whilst allowing them to make more considered decisions.
3. However, the participants noted that this would not necessarily prevent chambers from making an indication of success to candidates ahead of the mandated 'offer date' that have been successful. It was agreed that this must therefore be more carefully monitored.
4. One participant argued that a mandatory timetable is beneficial to accessibility at the Bar. A centralised timetable is easier to navigate and the availability of financial support from the Inns is timed to fit around the current Gateway period.
5. Some students felt that the introduction of an annual mandatory timetable will reduce their ability to obtain pupillage, as they will have to wait a year to re-apply. They indicated that if the recruitment process is to be mandated, then it should perhaps be mandated to occur more than once per annum, which would also assist candidates in balancing their workloads.
6. Conversely, some of the participants felt that this would complicate the process for those applicants likely to receive multiple offers, making the process less competitive. It was suggested that a single timetable is also better for candidates from non-traditional backgrounds, as it will otherwise be difficult to keep track of the competing deadlines and interviews.

7. Participants agreed that any pupillage offer should stand for seven days, and that the current guidance suggesting 14 days is excessive.
8. The group suggested that it ought to be compulsory for chambers to provide students with a written agreement, and that they should do so within a specified deadline post-acceptance of pupillage (which would form part of the timetable). Those present reasoned that doing so would afford pupils a greater level of security in the period between acceptance and commencement, whilst also providing clarity for tax purposes.
9. Finally, the participants suggested that any written agreement should include the conditions relating to the acceptance of a drawdown from chambers.

**Gateway Users' Focus Group  
(Chambers)**  
*Wednesday 3 and Monday 8 April  
2019*

Participants were asked:

1. Do you think that the pupillage recruitment timetable ought to be made mandatory;
2. Do you think that the Gateway recruitment timetable ought to be moved and, if so, which dates should it be moved to?

**Summary of Focus Group Responses**

1. Twelve out of fifteen sets agreed that the pupillage recruitment timetable should be made mandatory by the BSB. The main reasons cited by the focus group participants were:
  - a. The fact that candidates might find the process of applying for pupillage easier if all sets are mandated to advertise during the same period each year;
  - b. The need for the recruitment process to be as fair as possible and for candidates to have knowledge of all the offers being made to them before choosing their preferred set;
  - c. The need to eliminate any stress placed upon those candidates faced with an exploding offer whilst also awaiting the outcome of any remaining Gateway applications; and
  - d. The frustrations currently experienced by chambers due to any unnecessary expenditure of time when losing candidates to sets recruiting outside of Gateway part-way through their own process.
2. Those sets that thought the current rules ought not to be amended argued that:
  - a. The BSB should not be taking it upon itself to remove the ability for chambers to give

themselves a competitive advantage where they choose to do so; and

- b. Any move towards a mandatory timetable could potentially lead to more sets using Gateway for pupillage recruitment, thereby disadvantaging any chambers choosing to operate outside of the portal.

3. One chambers' representative offered an alternative suggestion, which was to re-introduce the rule that those sets recruiting outside of Gateway cannot make an offer of pupillage to their own candidates whilst the timetable is in operation.

4. In relation to the timing of Gateway itself, many chambers expressed dissatisfaction with the current timetable and indicated that they would like it to either:

- a. Resemble the old timetable, which ran from April (but should end in July as opposed to August); or
- b. Be moved forward by two to three weeks, so that chambers can access applications in mid-January.

5. The participants of the focus group asked if the advice contained within the BSB Pupillage Handbook relating the number of days chambers should leave offers of pupillage open for could be amended. Chambers would like to see it reduced from 14 days to, as a maximum, 7 days.