



Introduction

A 'trailblazer' is an innovator. A person who can think outside of the box and introduce new ideas. The Bar is an ancient profession, with deep-rooted traditions, and it has been particularly stubborn towards modernisation and innovation at times.

One particular area that needs tackling is the issue surrounding the route to qualifying at the Bar. It is no secret that there are not enough pupillage places to support the number of individuals completing the academic and vocational training. It is also no secret that the Bar has struggled with accessibility, equality and diversity.

What the Bar needs is a group of trailblazers to address these issues and implement exciting new and innovative ideas. Following discussions in 2017, an apprenticeship pathway for barristers was discussed and made possible from a regulatory standpoint.

Are apprenticeships the vehicle the Bar needs to trailblaze its way into the 21st century?

Background

The new apprenticeship route was introduced as an option following the BSB Consultation on 'Future Bar Training: Shaping the education and training requirements for prospective barristers'¹, which invited AETOs to propose their own structure for an apprenticeship pathway. The consultation also reiterated the four fundamental principles which the BSB state guide their decision making, these include: flexibility, accessibility, affordability, and sustaining high standards.

The Bar Qualification Manual now details, at 1C (d), that the apprenticeship pathway will involve a combined academic, vocational and work-based learning (pupillage) component. Despite this, there has been no further published information from the BSB or noticeable developments in this arena. This is disappointing given that the consultation highlighted that the apprenticeship route could see candidates offered education and training as part of their job, plus a salaried income to help with their living costs. Their salaries would increase as they progress and when qualifications are obtained. This route would also reduce the debt burden that many incoming members of the Bar face. This could also result in increased affordability for the organisations through government funding and for those innovative enough to tap into the additional income streams identified below.

Overall, the apprenticeship scheme would hit all of the fundamental principles in the BSB Authorisation Framework by improving accessibility, promoting flexibility, delivering affordability (both for the apprentice and the organisation), whilst maintaining the Bar's high standards.

¹The Bar Standards Board, 'Future Bar Training: Shaping the education and training requirements for prospective barristers' (October 2017)
< <https://www.barstandardsboard.org.uk/uploads/assets/5e96e65d-126a-438e-aa542cecf37e587c/fbtconsultationoctfinal-20170929.pdf>> Accessed 28 July 2021

Requirements

- An employment contract;
- Need to be paid at least minimum wage – this is restricted to £4.30 per hour for age 16 to 18 and for anyone else in the first year;
- At least 20% percent of normal weekly working hours must be for training or study;
- Funding is dependent on whether the organisation pays the apprenticeship levy – this is employers with a pay bill of over 3 million each year;
- Organisations who do not pay the levy pay 5% towards the cost of training and assessing the apprentice and the government pay the remaining 95% up to the funding band maximum. As an example, the maximum funding for the solicitor apprenticeship is £27,000 for a 5-year course;
- Extra funding may also be possible depending on circumstances of the employer and apprenticeship;
- The apprenticeship needs to be an approved apprenticeship - this will be where a training provider is important;
- The training must last at least 12 months;
- It is permissible for the 20% training to be online;
- Apprentices must have the same rights and conditions of employment as other employees at a similar grade or in similar roles; and
- There needs to be a commitment statement with the apprentice and training provider as well as a contract of employment and apprenticeship agreement.

Opportunities for apprentices

- Work with experienced staff;
- Learn job specific skills;
- Practical and hands-on learning and training;
- Ability to develop business, marketing and commercial skills;
- Develop confidence in a working environment; and
- Variety in day-to-day tasks and work.

Opportunities for organisations

- Skilled employees;
- Increased staff loyalty and retention;
- The opportunity to access government funding;
- Improvement to service;
- Additional support to established staff; and
- Business and commercial growth.

Barriers

The Employed Bar

Whilst the employed Bar is in a strong position to provide apprenticeships, the reality is that no single organisation is likely to take on a sufficient number of apprentices to make it worthwhile for the individual organisation to create the pathway. Equally, the lack of collaboration between organisations and also with training providers, in addition to a lack of numbers, means that there is insufficient incentive for training providers to develop the relevant components for the pathway.

Furthermore, it is unclear as to whether the number of opportunities which would be available through the employed Bar would, in itself, be sufficient to persuade all parties to invest the time to develop the pathway.

The Self-employed Bar

Similarly, a lack of numbers from individual chambers and a lack of collaboration are barriers in relation to the self-employed Bar; however, a larger barrier is the requirement for an apprentice to be employed. This is contrary to the nature of the relationship between Chambers and members/tenants. In itself, this is not insurmountable but, in the current environment of work opportunities and structure, this is only likely to be feasible if an apprenticeship existed which mirrored pupillage. This does not move matters forward from where we are with the current pupillage issues.

The major barrier to apprenticeships in a self-employed practice is the type of work available for apprentices within a traditional chambers. Pupillage offers the closest comparable training system to the apprenticeship model; however, it is often dependent upon limited work, such as drafting and advocacy, under the guidance of a pupil supervisor.

Additionally, there are current issues with the training and supervision structure as it is heavily reliant upon voluntary supervision and support from more senior members of Chambers. In order for a chambers apprenticeship route to be effective, a broader scope and structure of work would be required to allow the individual to develop the necessary skills and to be able to successfully complete the scheme.

A solution

In reality, whilst pupillage itself is hard to come by, there is evidence that there is plenty of work for individuals who have completed part or all of the academic and vocational stages. Often, individuals will undertake such work alongside or prior to the academic or vocational journey.

There appears to be an even higher demand for those who have been called to the Bar and are seeking pupillage.

The typical type of work undertaken by people at this stage of their career does vary, but it often includes:

- Acting as caseworkers, paralegals or legal assistants for Chambers, self-employed barristers, law firms and other types of entities. Essentially undertaking paralegal type activities including research, case preparation, drafting and general legal administrative duties.
- Working as an advocate, on a self-employed basis, for various legal organisations. This utilises the loophole in the Legal Services Act 2007 (LSA) allowing for individuals who are not authorised themselves under the LSA but are working for an LSA regulated entity to conduct court hearings being heard “in chambers”².

The latter type of work is more structured, predominantly taking place in SRA regulated entities; whereas, the former activities are more disparate, ranging from individuals working for large law firms to self-employed barristers.

All of this work could very easily form the structure for a barrister apprenticeship route; whether that was through some form of collaborative approach or through individual organisations wishing to capitalise upon the potential opportunities which could result (the organisation would need to be a regulated entity under the LSA – although would not be limited by a choice in regulator).

² The Legal Services Act 2007, sch 3, s 1(7)(c)

This could work particularly well within the Chambers model, as the clerking structure is already in place to facilitate the legal administrative demands of undertaking court work and also provides the scope for some valuable learning for the individuals; such as the skills and knowledge needed for practice management.

Additionally, Chambers could expand to offer a more structured and flexible paralegal type programme, which would allow the apprentice to deliver services for Chambers clients on an ad-hoc basis, undertaking training and additional learning alongside their work. It would provide the opportunity for barristers, solicitors and other clients to instruct on an ad-hoc basis; reducing the risk of over or under capacity. Additional benefits of the Chambers structure would include the guarantee of due diligence, high standards, reduced overheads and flexibility to the instructing party.

Training Providers

One of the major barriers which has hindered the apprenticeship route from development and really getting off the ground has been the lack of training providers that are happy to provide and deliver the educational and vocational aspects of the route. Without these programmes, the apprenticeship route cannot ever be fully supported. Given the success of the Solicitor Apprentice and other legal apprentice schemes, it is likely that this is, at least in part, due to lack of interest and innovation from the bar.

During the development of this paper, training providers were deliberately not approached or contacted for discussion. The main reasoning for this was to allow for these matters to be considered with a fresh and independent perspective, particularly when looking at what is needed in relation to the educational aspects of the training. Whilst that is still to be formulated, what is apparent, is that there are gaps in the current barrister training provisions and the skills needed to have a successful practice. This is particularly the case around business and soft skills; an issue which has become more apparent in recent years.

Some of the reasons for these gaps are due to changing regulatory requirements which have not yet trickled down into the training provision or have been missed by those seeking pupillage due to the current backlog.

It is particularly important that these gaps are addressed generally, but certainly as part of any development of the apprenticeship scheme.

Current legal apprenticeship routes include:

1. Chartered Legal Executive: This qualification is the equivalent of a degree and typically takes 60 months to complete. The maximum funding that the Government will provide towards this route is £12,000.
2. Paralegal: It is possible to qualify as a paralegal via an apprenticeship, within 24 months. The qualification is the equivalent to that of A levels and the government will provide up to £8,000.
3. Solicitor: Over a 60-month period, it is possible to qualify as a solicitor through an apprenticeship programme. The qualification is the equivalent to that of a master's degree and the government will provide funding of up to £27,000 for this route.
4. Clerking or legal administrators: There is currently a 15-month legal apprenticeship which is focused towards legal administrators who support lawyers. It includes a standard level 3 Business Administrator qualification, alongside three legal units with CILEX. This is often used by chambers to facilitate clerking apprenticeships.

All of the legal apprenticeship training courses which are currently available can be viewed here:

<https://findapprenticeshiptraining.apprenticeships.education.gov.uk/courses?keyword=§ors=Legal%2C+finance+and+accounting>

The main providers in the area of legal apprenticeships are:

- 1) **The Chartered Institute of Legal Executives (CILEX)** which currently offer an apprenticeship route which allows individuals to qualify as legal executives or as paralegals: https://www.cilex.org.uk/employers/support_for_learning_and_development/apprenticeships/apprenticeships_in_law

- 2) **BPP** offers a straight solicitor apprenticeship, a graduate solicitor apprenticeship and a linked paralegal apprenticeship (which allows you to carry onto the further solicitor qualification): <https://www.bpp.com/courses/law/apprenticeships>
- 3) **The University of Law** also offers a straight solicitor apprenticeship (following A level) and a graduate solicitor apprenticeship (following an undergraduate degree): <https://www.law.ac.uk/study/apprenticeships/for-students/>
- 4) **Damar Training** which offers apprenticeship routes for clerking, legal administrators, paralegals, chartered legal executives and solicitors: <https://www.damartraining.com/apprenticeships/legal-apprenticeships/>

The models which these providers have already established for other legal apprenticeship routes could quite easily be adapted to facilitate the barrister qualification, especially with the experience the providers have, not only in apprenticeships generally, but in legal apprenticeships.

What is interesting about the apprenticeship route in a general sense, is once an organisation has navigated the practical implementation of an apprenticeship scheme, the system is in place to offer (based on their needs and structure) apprenticeships to training solicitors; paralegals; clerks; legal administrators and/or barristers. It would be possible to tailor the set-up and systems for any of these roles to allow for further access to legal roles. In the future, along with the demand and development of the legal sector, apprenticeships could be extended to cover legal tech or librarian/research roles; or any other role which developed through client or service demand.

Possible structures of apprenticeship

1. Post law or conversion degree:

Alongside the vocational training course and compulsory pupillage courses

Stage 1: Undertaking administrative tasks, basic clerking tasks and some discrete research tasks which are non-client facing, essentially creating a research pool.

Stage 2: More involved administration, including more significant clerking/financing tasks and more detailed research including an introduction to some client facing research. This stage could involve pro bono advice activities, for example; for the small claims portal or a link with law clinics, perhaps as secondments.

Stage 3: Advocacy under the LSA 2007 loophole, as well as undertaking more technical and client facing research. The pro bono work could continue throughout this stage.

Stage 4: The final stage could be a shorter version of the existing pupillage scenario, but much more directed and focused.

2. Pre law degree which would precede the above course:

Alongside the academic, vocational training course and compulsory pupillage courses

As set out above, there already exists apprenticeship routes and these could be tweaked to precede the above apprenticeship. This would essentially create a two-stage approach where individuals can undertake the first course and if they wish, they can qualify and stop at that stage; but if they and their employer consider it appropriate, they can then move on to the next level.

This would create more opportunities and pathways and would ensure that only those who do have the skill and talent to move on to the second stage, do so. This ensures that there is no overcrowding or flooding of the market; disappointment for individuals who do not achieve the end goal; and, it provides a qualification and clear prospects even if the individual chooses not to proceed to the final stage.

The one additional factor, which is unique to the barrister route, which would need to be filtered into the models is where the 'Call to the Bar' fits. The BSB indicate in their Consultation on Future Bar Training³ that this may not occur until after successful completion of the work-based components. This would involve a move away from the traditional ordering of things as pupils will normally have been Called to the Bar by their Inn before they commence pupillage⁴.

Conclusion

It is clear that the apprenticeship route is a viable option to qualifying as a barrister. It also addresses some of the current issues faced by the Bar when it comes to qualification routes and, as detailed above, it would promote all of the BSB's fundamental principles (accessibility, flexibility, affordability and high standards).

There are barriers and hurdles which need to be addressed, but these are not insurmountable. With collaborative working, particularly from, the BSB, any interested organisations (whether at the self-employed or employed Bar) and educational providers, the apprenticeship pathway could be successful.

Next steps

In terms of next steps, it would be useful to undertake the following two extensive surveys:

- A survey which is tailored towards individuals which gauges current attitudes toward pursuing an apprenticeship qualification and ascertains what the hesitation is, if there is any. This survey could also obtain information and data on the scope and scale of work being undertaken across the profession by those whose ultimate/current goal is the bar.
- A survey which is tailored specifically towards organisations which would allow us to ascertain feedback, attitudes and interest in relation to this route.

Additionally, it would be practical to undertake further and more in-depth market research into the breadth and scope of in chambers work being undertaken by unregistered barristers working as advocates.

Expression of interest

If any individuals, organisations or training providers are interested in sharing their views and feedback on this paper or the apprenticeship route in general, please email your thoughts to: apprenticeships@beyond-compliance.co.uk. Additionally, please use this email to express your interest, we will then keep you updated on any further developments, discussion papers or surveys that relate to this topic by email.

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³ The Bar Standards Board, 'Future Bar Training: Shaping the education and training requirements for prospective barristers' (October 2017)

< <https://www.barstandardsboard.org.uk/uploads/assets/5e96e65d-126a-438e-aa542cecf37e587c/fbtconsultationoctfinal-20170929.pdf>> Accessed 28 July 2021, 17

⁴ The Bar Qualification Rules 5C (3):

<https://www.barstandardsboard.org.uk/training-qualification/bar-qualification-manual-new.html?part=5FA410D0-C627-4441-9DC9288B3AA3EE00&q=call+to+the+bar>

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