



# Waivers: reduction in pupillage

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## Introduction

At Clerksroom, we wholeheartedly agree and proactively promote the BSB objective of *“Improving accessibility – so that the best candidates are able to train as barristers and that the Bar as a whole better reflects the communities it serves.”*

The legal services profession has been changing for some time: it has, perhaps, taken a little longer for those changes to be reflected in the majority of the traditional bar. Nonetheless, the changes are happening. One of the significant changes we see practically at Clerksroom is the increase in Public Access instructions, through our subsidiary, Clerksroom Direct, these instructions have been increasing exponentially year-on-year.

This ties directly into the above stated BSB objective given that our experience is very clear that the expectations of those clients are that their barrister has to have the skills to relate directly to them as well as the expected legal knowledge and skill. These expectations are not just restricted to Public Access work as in line with the objectives of the Legal Services Board, purchasers of legal services are becoming increasingly informed and sophisticated.

## Numbers

We are aware that there is a lot of controversy about the volume of places offered by BPC providers when compared with the numbers of pupillage available; we agree that research and a discussion should take place for the benefit of law students and the Bar as a whole and we would happily be involved in such discussions.

Further details of Clerksroom thoughts on the subject can be found in the key documents titled Pupillage White Paper, The Problem with Pupillage and Pupillage Academy Proposal which can be found here: [www.pupillageacademy.com](http://www.pupillageacademy.com)

However, we believe that it is vital to take some immediate steps to deal with the issue currently facing us, in that there is a significant backlog of individuals searching for pupillage. This backlog has been accumulating over a number of years and will only continue to increase; for example, in February 2021, the BSB published an updated report on pupillage places and it demonstrated that there were only 386 pupillages registered with the BSB in 2020, a fall of 35% from the previous year. These figures are particularly worrying given the difficulty in obtaining pupillage prior to the pandemic. Naturally, it is highly unlikely that every individual that applies will succeed in obtaining pupillage and were this to occur, there is a possibility that the market would be flooded; but we would hope to see more opportunities than is currently being seen.

We believe that there exists a large pool of highly talented and dedicated individuals who have the skills, knowledge and dedication to not only meet the BSB competencies set out in the Professional Statement but to go on to develop successful self-employed practices.

In an attempt to make some changes in the right direction, the directors of Clerksroom have made a proposal for a charitable entity, the set up of which they will fund, to be formed to help solve this issue. Information on how this would be achieved and what that proposal looks like can be found here: [www.pupillageacademy.com/](http://www.pupillageacademy.com/) This application was submitted to the BSB in February 2021, and we are waiting for a response.

In fact, we anticipate that this proposal would form the first stage of our approach to finding real and meaningful solutions and that other practical benefits for the Bar as a whole would follow.

## Scope

In view of the variety and complexity of the BSB rules around exemptions and the differing routes to qualification, the scope of this guidance note is limited. By far the most common type of waiver we are asked about are waivers for reduction in the length of pupillage and therefore this note focuses on this aspect.

If your circumstances differ and you would like our advice in relation to your specific circumstances, feel free to contact us and we will help if we can.

## Our approach

We have always added value and points to our scoring process when someone has a BSB waiver/reduction. Almost all of our pupils to date have had a BSB waiver. We do this for what we hope is an obvious reason in that the BSB have highly skilled people looking at the applications and if they deem your application suitable, the application comes with an additional certificate of confidence and quality, as approved by the BSB. We are waiting to hear from the BSB as to whether we can continue to prioritise these factors under the new rules.

In our view, a waiver shows us several factors which are important:

1. That you have BSB approval of your experience;
2. The experience you have acquired is of a high standard and equivalent to the typical experience you would achieve during formal pupillage training;
3. Your continued dedication to the profession through the gaining of that experience; and
4. The contacts and general commercial knowledge/ability you will have gained through that experience. We strongly believe this will increase your chances of being a successful self-employed practitioner - which is most important for your own sustainability and for sustainability of the Bar as a whole.

Therefore, we strongly hope that the BSB permits us to continue adopting this approach.

In preparation for our application for the Pupillage Academy, we compiled evidence (albeit a small sample so far) which shows a correlation between individuals who hold waivers and have protected or diversity characteristics or those which will positively contribute to the BSB objective of *"Improving accessibility – so that the best candidates are able to train as barristers and that the Bar as a whole better reflects the communities it serves."* Indeed, there is also evidence of some intersectionality. This report can be viewed here: <https://www.pupillageacademy.com/Waiver-and-Diversity-Study.pdf>

## Status and perception of waivers/reduction in pupillage

As set out above, we strongly believe in the value of waivers/reductions in pupillage. We believe that our reasoning for this value is sound.

We are aware however, that not all Chambers place the same value on waivers/reduction as we do; indeed, we have heard anecdotally of instances where some chambers have not been prepared to accept waivers/reduction granted by the BSB and pupils have been required to undertake the full 12 months pupillage.

In addition, the BSB approach towards waiver/reductions in pupillage appears inconsistent to us and leads us to question whether they see that same value. In support of our question is the fact that where a waiver/reduction in pupillage is granted, the BSB still require the individual to apply for full pupillages through the Pupillage Gateway process. The implication from this requirement is that the BSB recognises the value of the waiver to the extent that it gives the individual an advantage in the pupillage application process over those who have not secured waivers/reductions in pupillage. The BSB states:

*“...where the prospective pupil(s) has been granted a reduction in the length of their pupillage by means of an application to the Bar Standards Board. In such circumstances, pupils would be expected to apply for full pupillage vacancies and to complete only the period of pupillage specified by the Bar Standards Board (unless the pupil chooses to complete the full period, notwithstanding the reduction allowed).”*

We are of the belief that this creates a strange situation where an individual with a reduction of 6 months (3 months non-practising: 3 months practising) in their pupillage has to apply for a full 12-month pupillage advertised vacancy, compete against and potentially take a spot which was advertised for and may have been available to a pupil who needed a full 12-month pupillage. In our view, this approach is only serving to compound the significant backlog which already exists.

There are solutions to this problem such as - a requirement that Chambers, entities and companies who offer pupillages to those with a waiver are required to also offer a set number of pupillages to those who actually need a full 12-month pupillage, for example.

Whilst there is at this point only a small amount of evidence to support our theory of a correlation between waivers and diversity, anecdotal evidence strongly supports our suspicions that candidates who are able to secure waivers and exemptions are frequently in that situation because it was necessary for them to secure work and thus experience elsewhere because they were overlooked repeatedly for pupillage because of their diversity by the majority of Chambers.

In a sense, could it be that the waiver/pupillage reduction system is one way of like-minded individuals and Chambers adapting their own approach to the significant lack of pupillage and accessibility to the profession through necessity given that the regulatory regime hasn't got the design right?

## The rules

Under rule Q7 of the Bar Qualification Rules (“BQR”), the BSB may grant exemptions from all or part of the requirements contained in Part 4.B of the BQR which applies to all individuals who wish to be called to the Bar and to become qualified to practice as a barrister.

When making their decision, Rule Q8 states that the BSB will determine whether the relevant knowledge and experience of the applicant make it unnecessary for further training to be required.

Rule Q9 sets out that an exemption may be granted unconditionally or may be subject to conditions and some examples are given.

Under Rule Q10, the BSB can consider exemption from the requirement to attend qualifying sessions or specify a period within which the requirement to attend qualifying sessions must be fulfilled.

Rule Q11 sets out the information which must accompany an application for exemption; this is set out in more detail in the guidance note to the exemption/pupillage reduction application form.

The BSB states under rule Q12 that they may make any further enquiries or require the applicant to provide any further information that it considers relevant.

Rules Q13 – Q16 set out the circumstances in detail which need to apply in order for the BSB to consider a full exemption. We have not detailed them here given that we consider such circumstances would benefit from detailed review of the rules. The groups of individuals who would benefit from such review are:

1. An individual who has been granted rights of audience by an approved regulator and who is entitled to exercise those rights in relation to all proceedings in all courts of England and Wales;
2. An individual who has been granted rights of audience by an approved regulator and who is entitled to exercise those rights in relation to either all proceedings in the High Court or all proceedings in the Crown Court of England and Wales (but not both);
3. A barrister of Northern Ireland who has successfully completed pupillage in accordance with the rules of the Bar of Northern Ireland; and
4. A Qualified Swiss Lawyer.

## An overview of the process

There are specific forms for different types of waivers and exemptions on the BSB website which can be found here: [www.barstandardsboard.org.uk/training-qualification/barrister-training-waivers-and-exemptions.html](http://www.barstandardsboard.org.uk/training-qualification/barrister-training-waivers-and-exemptions.html)

There is a specific form relating to pupillage reduction under the heading “For current/prospective pupils” which needs to be used as well as a guidelines document. However, we recommend caution as presently, the guidelines document makes reference to an old version of the rules of the BSB Handbook.

The BSB website states that they normally deal with all applications within eight weeks of receipt and notifies applicants of its decision within 10 days of a decision being made.

You can submit your application by post or email. However, all applications must contain a hand-written signature.

The fees are set out on the BSB website page set out above; as of June 2021, the fees are set out below and BACS payment is preferred:

- **Pupillage Reduction - £55.00**  
Application for reductions in pupillage based on experience gained outside the usual pupillage structure.
- **Pupillage Reduction (Barrister also qualified as a Solicitor) - £55.00**  
Application by an individual who has both been called to the Bar and enrolled as a solicitor and who is seeking a reduction in pupillage.

An applicant who is dissatisfied with a decision maybe request a review of that decision and any request for a review must be made on the designated application form and accompanied by the relevant application fee within one month.

A Review Panel is convened and applications for review are normally determined within 10 weeks of receipt.

## Our advice on your application

Your application should not be rushed, and the appropriate amount of time should be invested given the potential benefits of a successful application.

It is important that you consider and follow the guidelines which can be found here:

[www.barstandardsboard.org.uk/training-qualification/barrister-training-waivers-and-exemptions.html](http://www.barstandardsboard.org.uk/training-qualification/barrister-training-waivers-and-exemptions.html)

However, as mentioned above, do note that the Rules set out on page 8 of the Guidelines document have not yet been updated; the correct rules are set out above.

Specific points to consider are:

1. One of the first things you need to be aware of is that the individual(s) assessing your application is unlikely to be a lawyer. Therefore, blinding them with your technical legal expertise or with details of a particularly successful case is unlikely to be helpful. Rather, the BSB (and indeed Chambers or employers) are more interested in consistent, meaningful and relevant experience and development of your competence.
2. I recommend that you pay particular attention to guidance notes 1.6 to 1.12 which set out the timescales for which you may gain reductions. In my experience, the BSB authorisations team follow this guidance closely. Therefore, an important aspect of your application is to show the length and depth of your experience in a consistent flow. To this end, if your experience is broken down into different types such as employment, volunteering and mini pupillages; whilst it will be important to set out a clear chronology of your experience so that the assessor can clearly see the time period which your experience spans, you should then consider setting out the different types of experience in separate clearly defined sections to highlight this point.
3. On the issue of relevance, I consider it is imperative to reference your experience against the Professional Statement which is linked below. The Bar Qualification Manual clearly sets out that your performance during pupillage is required to be assessed against development and demonstration of the competencies in the Professional Statement:  
[www.barstandardsboard.org.uk/training-qualification/the-professional-statement.html](http://www.barstandardsboard.org.uk/training-qualification/the-professional-statement.html)
4. Self-reflection is also emphasised by the Bar Qualification Manual so carrying out a self-assessment against the competencies in the Professional Statement can be very useful and has the added benefit of helping you feel a little more confident and in control of your own future development.
5. You may be tempted to change the layout, sections and headings of the form for your own benefit. I would strongly advise against this given that the BSB has set out the form in the way which makes it easier for them to assess applications. Changing the layout would likely cause difficulty and frustration to the assessor: this is not a state of mind you want to create (however unintentionally) for the person assessing your application! For example, on page 3, where the form asks you to explain how the experience you have gained satisfies the outcomes of pupillage in specific areas, you should ensure that you clearly mark and follow each of the topics in order.
6. The references required from supervisors are obviously a very important part of your application given that they clearly need to support the evidence you have set out. Whilst these should be obtained at the end so that the supervisor can review your application and affirm it, you should approach your current and former supervisors at an early-stage to explain your requirements and secure their support.
7. Finally, remember that this is a great opportunity to practice your persuasive advocacy skills; you are telling a story about your experience and are asking the regulator to put its faith and trust in your story and the evidence you provide.

## Conclusion

As you will no doubt be aware, due to new regulations introduced by the BSB, we are unable to accept any pupillage applications directly to Chambers; all pupillage vacancies have to be advertised on the Bar Council owned Pupillage Gateway which can be found here: [www.pupillagegateway.com/](http://www.pupillagegateway.com/)

In addition, all pupillage providers have to advertise in line with the timetable unless they have paid for and secured a waiver from the BSB. Whilst there are currently a handful of vacancies listed at the moment, the next season will start in around October 2021 with applications being permissible from around January 2022.

At the moment, we are awaiting a response from the BSB to our application for authorisation of the Pupillage Academy in which we have asked for authorisation for an alternative and more flexible approach. Their response to this application will determine when we are allowed to advertise. So keep your eyes on the Pupillage Gateway or our LinkedIn feed for any announcement of our adverts.

As stated above, Clerksroom has always added value and points to our scoring process when someone has a BSB waiver. Almost all of our pupils to date have had a BSB waiver. We do this for what we hope is an obvious reason in that the BSB have highly skilled people looking at the applications and if they deem your application suitable, the application comes with an additional certificate of confidence and quality, as approved by the BSB. We are waiting to hear from the BSB as to whether we can continue to prioritise these factors under the new rules.

So please bear with us and apply for pupillage as soon as advertise on the Pupillage Gateway. We will do this once we have approval from the BSB to our application, and we can get ourselves up to speed with the Gateway and publish our advert. You can find out more about the Pupillage Academy and download our brochure here: [www.pupillageacademy.com/](http://www.pupillageacademy.com/)

All the best and thank you for your interest in Clerksroom.

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