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From The Honorary Secretary
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DEFERRAL OF CALL TO THE BAR

RESPONSE BY THE SOCIETY OF LEGAL SCHOLARS TO THE CONSULTATION PAPER ISSUED BY THE BAR STANDARDS BOARD ON 14 JULY 2006

1. The Society of Legal Scholars welcomes the opportunity to respond to the Consultation Paper on Deferral of Call issued on 14 July 2006. The Society is a learned society whose members teach law in a University or similar institution or who are otherwise engaged in legal scholarship. Founded in 1908, and with over 2,700 members, it is the oldest as well as the largest learned society in the field. The great majority of members of the Society are legal academics in Universities, although members of the senior judiciary and members of the legal professions also participate regularly in its work. The Society's membership is drawn from all jurisdictions in the British Isles and also includes some affiliated members typically working in other common law systems. The Society is the principal representative body for legal academics in the UK as well as one of the larger learned societies in arts, humanities and social science.
2. The SLS notes that the question is whether it is in the public interest for call to the Bar to be deferred until after completion of part or all of pupillage. The Consultation Paper helpfully sets out the long history of this matter. It is recognised that the Bar Council has on a number of occasions endorsed such a proposal in principle. However, the SLS welcomes the decision of the Bar Standards Board that it should review this matter and that its decision should be evidence-based. Its comments on the Consultation Questions are as follows.
3. Qn 1. *Is it in the public interest to defer call to the Bar until after completion of pupillage, and what evidence is there which is relevant in answering this question?*
 - 3.1 Taking the second part of this question first, the evidence on which a decision should be based includes any evidence (1) that the public has been misled by the current arrangements; and of the effect or likely effect of the proposed change on (2) the diversity of recruitment to the Bar; and (3) the recruitment of students from overseas to study law in the UK at undergraduate and postgraduate levels, including on a Bar Vocational Course. The public interests relevant here are not to be confined to the interests of consumers of

the services of barristers, but extend to include the wider interests of the health of legal education in the UK and the ongoing value of links with overseas jurisdictions through the acquisition by so many from overseas of a UK legal qualification.

- 3.2 In so far as one is looking back at the impact of the current arrangements, which have been in place for many years, it is legitimate to expect there to be cogent evidence that members of the public have been misled in some significant way to justify a change that carries any serious risk to diversity or of damaging the health and impact overseas of legal education. This would include evidence of significant breaches of the relevant Conduct rules that prohibit barristers who have not completed pupillage from undertaking legal practice. The proposition in para. 28 of the Consultation Paper that “the public is entitled to expect that someone who has obtained this qualification has completed the training necessary to practise under it” does not purport to state that it does in fact have that expectation or that anyone is misled. For the most part, barristers are briefed by solicitors who fully understand the position.

The SLS is not aware of hard evidence that the current arrangements have operated against the public interest in any way. In the light of that, it is not possible to assess the extent to which deferral of call would provide the answer to the supposed problem. Any view that the current arrangements are “untidy” or should be changed because they are different from those that apply to solicitors would be a wholly inadequate basis for change.

- 3.3 In so far as one is assessing the likely impact of the proposed change, the relevant evidence must be based more on the informed judgment of those involved in admissions to the Bar and the provision of legal education. Where this involves predictions as to the likely behaviour of students (including overseas students), it should be possible for the BSB to conduct market research and also to consult the Bar’s sister organisations in overseas jurisdictions.

It is difficult to predict whether the change would reduce the numbers of home students wishing to take a Bar Vocational Course. There is, however, a clear risk that it would deter disproportionately students from less wealthy backgrounds. The point then becomes one that it is not sensible to create that risk in the absence of evidence of a current threat to the public interest.

The judgment of those involved in Law Schools is that there is an even clearer risk that the change would damage international recruitment to UK universities at both undergraduate and postgraduate stages. Many overseas students tell us that they are currently attracted by the possibility of following their undergraduate studies by the BVC. Clearly, a reduction in overseas student numbers would be financially detrimental to some Law Schools and providers of the BVC. This should not simply be ignored. Indeed, it should be recalled that it is government policy to encourage international

student recruitment and widely recognised that this brings all kinds of benefits to the UK, well beyond the fees that they pay to institutions. In the case of Law there are the added points (1) that the diversity of perspective brought by the presence within Law Schools of overseas students from many countries adds value to the experience of all students; (2) that the fact that a significant number of people from overseas obtain a UK legal qualification helps maintain the attractiveness of the UK legal systems as a vehicle for the resolution of legal disputes; and (3) that a legal qualification is seen by many as a suitable basis for a variety of careers, including public service, where again links with the UK can prove helpful on into the future. These considerations might well have to give way in the face of cogent evidence of an existing threat to the public interest, but there is no such evidence.

What then of the argument, noted at para. 38 of the Consultation Paper, that “what is required in order to qualify as an English barrister should be determined by reference to the training needed to practise as such – and that to allow the requirements to be determined by what suits students who intend to practise as foreign lawyers would be to allow the tail to wag the dog”? This argument again only carries weight if there is evidence of a threat to the public interest in the current arrangements. The proposition could equally well read “what is required in order to practise as an English barrister...etc.”

4. *Qn 2. If call to the Bar is to be deferred, what should be the future status of pupils? In particular:*
- (a) should pupils be temporarily called to the Bar for the second six months of pupillage?*
 - (b) alternatively, should a new title of ‘pupil barrister’ or ‘trainee barrister’ be created – and, if so, for how long should it be available?*

If call is to be deferred, some title is necessary for those undertaking pupillage. ‘Trainee’ is more appropriate than ‘Pupil’. The successive conferral of two titles will add to the Bar’s bureaucracy.

5. *Qn. 3. If call to the Bar is to be deferred, should a new qualification be awarded by the Bar Standards Board or the Inns on successful completion of the Bar Vocational Course?*

Yes. Steps should be taken to make it a recognised award. It would, however, not be appropriate to confer either title mentioned in para. 45 of the Consultation Paper on all those who pass the BVC for the reasons given there. The title “Bar graduate” would be unlikely to carry any value.

6. *Qn. 4. If call to the Bar is to be deferred, are there any other changes to the rules and arrangements governing entry to the profession which it is essential to make at the same time?*

- 6.1 The question of the disparity in numbers between the numbers completing the BVC and the number of pupillages available raises separate issues. The main point is that prospective Bar students should be made fully aware of the disparity. The information is in the public domain and known to careers advisers in Schools and Universities. Steps could be taken to deal with any inappropriate advertising (the Society is not aware of examples).
- 6.2 If call were to be deferred, the possibilities canvassed in paras 52 to 54 should certainly be explored.

7. *Qn. 5. If call to the Bar is to be deferred and any other associated changes made, what considerations should influence the timetable for implementing these changes?*

Any new policy should take effect at least four years after it is finally approved, to protect the legitimate expectations of students within the system.

S H Bailey

Hon. Secretary, Society of Legal Scholars

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