



REGULATING BARRISTERS

**Mandating the timetable for pupillage recruitment and
written agreements for pupillage**

31 January 2020

Part I: Pupillage Gateway Timetable

1. The BSB already requires, as a condition of authorisation, that [all pupillages must be advertised on the Pupillage Gateway](#). This website is operated by the Bar Council. Authorised Education and Training Organisations (AETOs) must apply for a waiver for any exception. However, there is currently no requirement to adhere to the common Gateway recruitment timetable. The BSB will introduce a requirement, by way of a condition of AETO authorisation, that all pupillage recruitment must be in line with the Pupillage Gateway timetable. This will be effective from **1 November 2020**, after which AETOs will need to ensure that each stage of the advertising and recruitment process takes place in accordance with the published timetable (whether they administer their recruitment process on or off the Gateway website).
2. Note that AETOs do not have to use the Gateway to process applications. We are not proposing any change to this.
3. The current (non-mandatory) Gateway timetable runs from late November to early May annually. We believe that the best way to ensure fairness for both AETOs and pupils is to have one fixed timetable every year.
4. One timetable will be mandated, with specific dates set annually. The broad timing, based on the current Gateway timetable, is likely to be as follows:

For AETOs recruiting on the Gateway	For AETOs recruiting off the Gateway
(1) Late November - publication of advertisements on the Gateway: pupillage providers must register their accounts and submit applications for approval. All approved vacancy advertisements will be published for prospective applicants to browse. Pupillage providers who plan to administer their recruitment process through the Gateway must make a payment.	(1) Late November - publication of advertisements on the Gateway: pupillage providers must register their accounts and submit their applications for approval. Applications should include details on how applications are to be made (e.g. by post or email address). All approved vacancy advertisements will be published for prospective applicants to browse.
(2) Early January - applications open: the submissions window for applications opens and applicants can start, edit and submit their applications. Pupillage providers will	(2) Early January - applications open: the submissions window for applications opens and applicants can send their applications to

not have access to the applications until the submissions window closes.	the AETO.
(3) Early February - applications close: the submissions window for applications closes and no further applications or amendments to applications are allowed. Pupillage providers can begin to download and assess applications and acknowledge receipt of applications.	(3) Early February - applications close: the submissions window for applications closes and no further applications are allowed. Pupillage providers can begin to assess applications and acknowledge receipt of applications.
(4) February to May - shortlisting and interviews: pupillage providers can sift through applications, shortlist applicants and conduct interviews. They can communicate the status of an application with applicants through the Pupillage Gateway.	(4) February to May - shortlisting and interviews: pupillage providers can sift through applications, shortlist applicants and conduct interviews. They can communicate the status of an application with applicants directly (e.g. by post, email or telephone).
(5) Early May - offers made: pupillage providers will make offers through the Gateway system. All offers will be made on the same day at the same time.	(5) Early May - offers made: pupillage providers will make offers of pupillage (e.g. via post or email). All offers will be made on the same day. Pupillage providers are not able to make offers to applicants in advance of this date.
(6) Mid-May - deadline for accepting offers: all applicants have a 7-day deadline to communicate acceptance of an offer (if any). Applicants will be able to accept an offer anytime up to the deadline. If the 7-day deadline passes without the applicant accepting the offer, AETOs should send out second round offers within a reasonable time period.	(6) Mid-May - deadline for accepting offers: all applicants have a 7-day deadline to communicate acceptance of an offer (if any). Applicants will be able to accept an offer anytime up to the deadline. If the 7-day deadline passes without the applicant accepting the offer, AETOs should send out second round offers within a reasonable time period.

5. Setting the timetables will remain with the Bar Council given they have operational responsibility for the Gateway. However, as compliance with the Gateway timetable will be a regulatory requirement (namely, a condition of pupillage AETO authorisation) we will need to be assured that the timetable supports the principle of accessibility and does

not disadvantage candidates or particular groups of candidates. The Bar Council will present their suggested timetable to us annually, together with an equality impact assessment and a written statement of the factors they have taken into account. We will then consider whether to approve the timetable in accordance with the LSB's Internal Governance Rules and the protocol on regulatory independence between the BSB and the Bar Council. This governance arrangement will be formally agreed with the Bar Council.

6. Waivers from the timetable (or from specific stages of the timetable) will only be considered in exceptional circumstances. We will publish criteria for granting waivers e.g. where AETOs recruit both barristers and solicitors to a common timetable, which may be complex to change and not proportionate for us to mandate. Any waivers granted will be listed on our website for transparency so that candidates are aware of all opportunities.
7. We have also committed to a review of these changes two years after November 2020 (the effective from date), consistent with our wider plans for evaluation of the Future Bar Training programme.

Part II: Pupillage Written Agreements

8. The BSB will introduce a mandatory requirement, effective from **1 May 2020**, for written agreements to be in place between AETOs and pupils. Written agreements must be signed by the AETO and pupil upon commencement of pupillage.¹ This will be established as a condition of AETO authorisation.
9. The outcomes which AETOs will be required to meet in their written agreements can be found below. The outcomes are split into three sections: the duties of the AETO, the duties of the pupil and details of the pupillage (there is also an appendix which details the written policies which AETOs must provide pupils with copies of or otherwise make available). Most of the outcomes reflect existing requirements in the BSB Handbook, Authorisation Framework, Curriculum and Assessment Strategy and Bar Qualification Manual, and those which are not existing requirements will be added to the Bar Qualification Manual in due course. It will be for the AETO to draft the specific wording of terms, provided the following outcomes are met. In addition:
 - AETOs will be able to add further terms if they wish, provided they are not unfair, not unduly onerous and do not unlawfully discriminate;
 - Written agreements must reflect any relevant legislation, such as the obligations of both the AETO and the pupil under the General Data Protection Regulation and the Data Protection Act 2018;
 - If the pupillage is at the self-employed Bar, then the written agreement should not create an employment relationship between the pupil and the AETO, nor be a contract for services or of apprenticeship; and
 - If the pupillage is at the employed Bar, then the written agreement should not affect the employed status of the pupil, or the obligations of either the AETO or the pupil in relation to employment and related law.

¹ Where an AETO is not a legal entity, as a condition of AETO authorisation a pupillage agreement must either be between the pupil and an associated legal entity of the AETO (e.g. a service company incorporated by members of chambers) or be between the pupil and a person/body of appropriate seniority at the AETO (e.g. a Head of Chambers/Management or Pupillage Committee). The intended means of entering into an agreement must be made clear at the stage of applying to become an AETO and approved by the BSB as part of the authorisation process. As a condition of AETO authorisation, any change in the intended means of entering into an agreement must be notified to and approved by the BSB in advance.

10. In the event of a breach of a written agreement, the BSB could take appropriate action on the basis that either BSB Handbook requirements or conditions of AETO authorisation have been breached.
11. Offers of pupillage must also be made by AETOs to prospective pupils in writing. Upon acceptance of the offer, this must be signed by the AETO and prospective pupil. In addition, offers must incorporate the AETO's standard pupillage terms which must be available to the prospective pupil on their website or on request. These requirements will also be established as conditions of AETO authorisation. Full details of what offers will be required to state can be found below.

Agreement outcomes: duties of the AETO

AETOs must ensure that:

General terms

1. The pupillage is conducted in a manner which is fair and equitable, including the fair distribution of training opportunities to the pupil (Rule C110.3.i of the BSB Handbook);
2. Pupil supervisors are appropriately trained and registered with the BSB by the AETO (Authorisation Framework and Bar Qualification Manual Part 2 C2);
3. The pupil is covered by insurance (either that of the AETO or a pupil supervisor) for all legal services supplied to the public (Rules C76-77 of the BSB Handbook). If the pupil is covered by the insurance of a pupil supervisor, and there is more than one pupil supervisor at any one time, there must be clarity as to which pupil supervisor's insurance covers the pupil;
4. The AETO and pupil supervisors promptly provide the pupil with all necessary assistance in complying with their regulatory obligations e.g. registering their pupillage with the BSB, applying for any necessary waivers and obtaining a provisional practising certificate (Bar Qualification Manual Part 2 C2);
5. Throughout the pupillage, the BSB is promptly notified of any material changes to the pupillage e.g. change in the date of commencement or expected completion, or change

of pupil supervisor² (Authorisation Framework);

6. Where a pupil ceases to be a pupil at the AETO for whatever reason, to provide the pupil on request with copies of their training records which apply to the period of pupillage completed at the AETO (Bar Qualification Manual Part 2 C5); and
7. The pupil is provided with copies of, or made aware of how to access, the written policies set out in the appendix below (Authorisation Framework).

Training programme

8. The AETO and pupil supervisors provide the pupil with a written description of the training programme which enables the pupil to meet the competences in the BSB's Professional Statement and is included as a Schedule to the agreement (Authorisation Framework). In particular, the written description of the training programme must provide details of:
 - What training the pupil will undertake in the non-practising and practising periods (Authorisation Framework);
 - The supervision arrangements that the pupil can normally expect in the non-practising and practising periods (Authorisation Framework);
 - How frequently appraisals/performance reviews will be conducted (Authorisation Framework);
 - The compulsory advocacy course, which the pupil must complete prior to starting the practising period (and, when mandated, the compulsory negotiation course) (Curriculum and Assessment Strategy);
 - (From the academic year 2021/22) the compulsory professional ethics examination which the pupil must pass prior to completing pupillage. The training programme must state whether the AETO will pay for second or subsequent resits³, and the course of action to be taken if the pupil has not passed the examination/compulsory courses before the pupillage is due to be completed (Curriculum and Assessment Strategy);
 - Where a pupil will be doing a period of pupillage at another AETO, details of the other AETO, the length of the period of pupillage at the other AETO, what training

² Both the AETO and the pupil are required to ensure that the BSB is promptly notified.

³ The examination and first resit will be funded from the practising certificate fee. Subsequent resits will be charged to the AETO or pupil.

the pupil will undertake, how the pupil will be supervised and assessed and arrangements for the pupil supervisor to certify that the period of pupillage at the other AETO has been satisfactorily completed (Authorisation Framework);

- The course of action to be taken if, for an extended period of time, the pupil takes sickness or other absence from training or there is no appropriate pupil supervisor, and there is a risk the competences in the BSB's Professional Statement will not be met (including notifying the BSB so that special provision can be made where necessary)⁴ (Bar Qualification Manual Part 2 C3);
- How assessment against the competences in the BSB's Professional Statement will be conducted at the end of the non-practising period (Curriculum and Assessment Strategy and Authorisation Framework); and
- How final assessment against the competences in the BSB's Professional Statement will be conducted at the end of the practising period (Curriculum and Assessment Strategy and Authorisation Framework).

Assessments and certification of completion

9. The course of action to be taken if the pupil does not pass a) an assessment against the competences in the BSB's Professional Statement at the end of the non-practising period, or b) a final assessment against the competences in the BSB's Professional Statement at the end of the practising period must be set out in writing.
10. Pupil supervisors give the required notification to the BSB on satisfactory completion of a final assessment against the competences in the BSB's Professional Statement (Bar Qualification Manual Part 2 C5).

Pupillage funding

11. The Pupillage Funding Rules (Rules C113-118 of the BSB Handbook) are complied with. In particular, the agreement must:

⁴ The rationale for this term is to ensure that pupils who need to take sickness or special absence from training are treated fairly in relation to completion of pupillage. In deciding whether an extension to pupillage is required, the key focus for AETOs should not be to look at the number of days or weeks a pupil has been absent from training, but whether the pupil has met the competences set out in the BSB's Professional Statement by their date of completion.

- Provide details of the minimum amount to be paid each month, whether this will be paid in advance or in arrears, when/how this payment will be made and who in the AETO is responsible for ensuring that this is done;
- Provide details of the AETO's policy on reimbursing expenses for travel and compulsory courses;
- If the AETO is a chambers, provide that either the AETO/self-employed barristers in chambers will pay the pupil for anything which because of its value warrants payment in addition to their pupillage award, or that the pupil is receiving a pupillage award or remuneration in lieu of payment for any individual item (Rule C116 of the BSB Handbook);
- Provide that the agreed funding arrangements do not apply where a pupil (i) is doing a period of pupillage at another AETO, or (ii) ceases to be a pupil at the AETO for whatever reason; and
- State who is responsible for any tax/National Insurance/VAT payments.

Agreement terms: duties of the pupil

Pupils must ensure that:

12. Prior to starting the non-practising period, they provide clear documentary evidence to their AETO that they have satisfactorily completed academic and vocational training components, are a member of an Inn, have obtained immigration visas (where relevant) and registered their pupillage with the BSB (Authorisation Framework);
13. Throughout pupillage, they keep adequate training records (particularly to assist their final assessment against the competences in the BSB's Professional Statement) (Authorisation Framework);
14. Throughout pupillage, any necessary waivers from the BSB Handbook have been granted by the BSB, and that the BSB is promptly notified of any material changes to the pupillage e.g. change in the date of commencement or expected completion, or change of pupil supervisor⁵ (Authorisation Framework);
15. During the non-practising period, they do not provide legal services as a barrister. The exception is doing a noting brief (taking notes in a trial) with the permission of their pupil supervisor, Head of Chambers or Head of Legal Practice (Rule S11 of the BSB

⁵ Both the AETO and the pupil are required to ensure that the BSB is promptly notified.

Handbook);

16. Prior to starting the practising period, they have registered with the Information Commissioner's Office (if the pupil is at a chambers)⁶, been called to the Bar⁷ and obtained a provisional practising certificate from the BSB; and
17. During the practising period, they do not provide legal services as a barrister without the permission of their pupil supervisor, Head of Chambers or Head of Legal Practice (Rule S19 of the BSB Handbook).

Agreement terms: details of the pupillage

The agreement must state:

18. The required notice period for the pupil to withdraw from the pupillage prior to the pupil starting the non-practising period;
19. Any conditions which must be fulfilled prior to the pupil starting the non-practising period e.g. required achievement in vocational training;
20. The date of commencement, length of the non-practising and practising periods and the date of expected completion (Authorisation Framework and Bar Qualification Manual Part 2C C2 and C3);
21. Which pupil supervisor will supervise the pupil at the commencement of the non-practising period (Bar Qualification Manual Part 2 C2 and C3), and contact details for the pupil supervisor and others in the AETO with responsibility for pupillage. This information must be provided to the pupil prior to commencement of pupillage;
22. The minimum hours which may be required of a pupil in relation to their education and training, and whether a pupil may be expected to do additional hours in relation to their

⁶ A pupil at a chambers will be required to register with the Information Commissioner's Office (ICO) if they process personal data on behalf of their clients. A fee must be paid to the ICO to register. A pupil at another organisation – for example, a law firm – will not be required to register with the ICO, as the organisation will be responsible for processing personal data and already registered with the ICO. Please refer to the ICO's website [here](#) for further information.

⁷ Pupils will normally have been called to the Bar before commencing the non-practising period of pupillage (Bar Qualification Manual Part 2C).

education and training; for example, this would cover a typical day for a pupil and any expectation of weekend or evening commitments; and

23. The required notice period for the AETO or the pupil to withdraw during pupillage. If the AETO withdraws during pupillage, or no longer wishes to be authorised to take pupils, or is no longer authorised to take pupils, the AETO must promptly notify the BSB and use their best endeavours to identify another AETO where the pupil(s) can complete their training (Authorisation Framework and Bar Qualification Manual Part 2 C3).

Appendix

The written policies which AETOs must provide pupils with copies of or otherwise make available are as follows:

24. A **written absence from training policy** which (i) states as a minimum that pupils are entitled to four weeks' absence from training per annum i.e. 20 days in addition to Bank Holidays and (ii) includes provisions on sickness and other absence from training (Bar Qualification Manual Part 2 C3);
25. A **written complaints and grievances policy** which (i) states that pupils have a right to complain and (ii) sets out the procedure for dealing with complaints and grievances (Authorisation Framework);
26. A **written anti-harassment policy** which (i) states harassment will not be tolerated or condoned, and that pupils have a right to complain if it occurs (Rule C110.3.j of the BSB Handbook) and (ii) sets out the procedure for dealing with complaints of harassment;
27. A **written reasonable adjustments policy** aimed at supporting pupils among others (Rule C110.3.m of the BSB Handbook) which sets out the procedure for requesting reasonable adjustments;
28. A **written disciplinary policy** which states (i) the conditions under which the AETO may suspend or terminate the pupillage for disciplinary reasons, (ii) the required notice period (if any), (iii) the method for the pupil to appeal the decision of the AETO and (iv) whether the AETO may seek repayment from a pupil in the case of misconduct (in accordance with Rule C115 of the BSB Handbook). This written policy must set out what the AETO regards as disciplinary action and misconduct for the purposes of the policy e.g.

breaches of the AETO's policies or rules, breaches of the written agreement for pupillage and/or BSB disciplinary findings; and

29. A **written recruitment policy** which provides details of any recruitment process for tenancy or employment following the completion of pupillage, including any additional period of training, assessment or probation⁸ (Authorisation Framework).

Offers

30. Offers must state:

- That the AETO and pupil supervisors will promptly provide the pupil with all necessary assistance in complying with their regulatory obligations e.g. registering their pupillage with the BSB, applying for any necessary waivers, etc. (outcome 4 above);
- Pupillage funding arrangements (outcome 11);
- That pupils must provide, prior to starting the non-practising period, clear documentary evidence to the AETO that they have satisfactorily completed academic and vocational training components, are a member of an Inn, have obtained immigration visas (where relevant) and registered their pupillage with the BSB (outcome 12);
- The notice period for the pupil to withdraw prior to the starting the non-practising period (outcome 18);
- Any conditions which must be fulfilled prior to the pupil starting the non-practising period e.g. required achievement in vocational training (outcome 19); and
- The date of commencement, length of the non-practising and practising periods and the date of expected completion (outcome 20).

⁸ This written policy should clearly set out the process which pupils should expect to follow if they wish to apply for tenancy or employed position at the AETO once pupillage has ended. The AETO is under no obligation to offer a tenancy or employed position; however, a written policy will ensure pupils have a clear understanding of what their likely options will be once the pupillage is complete.