



# Waivers: Transferring to the Bar of England and Wales

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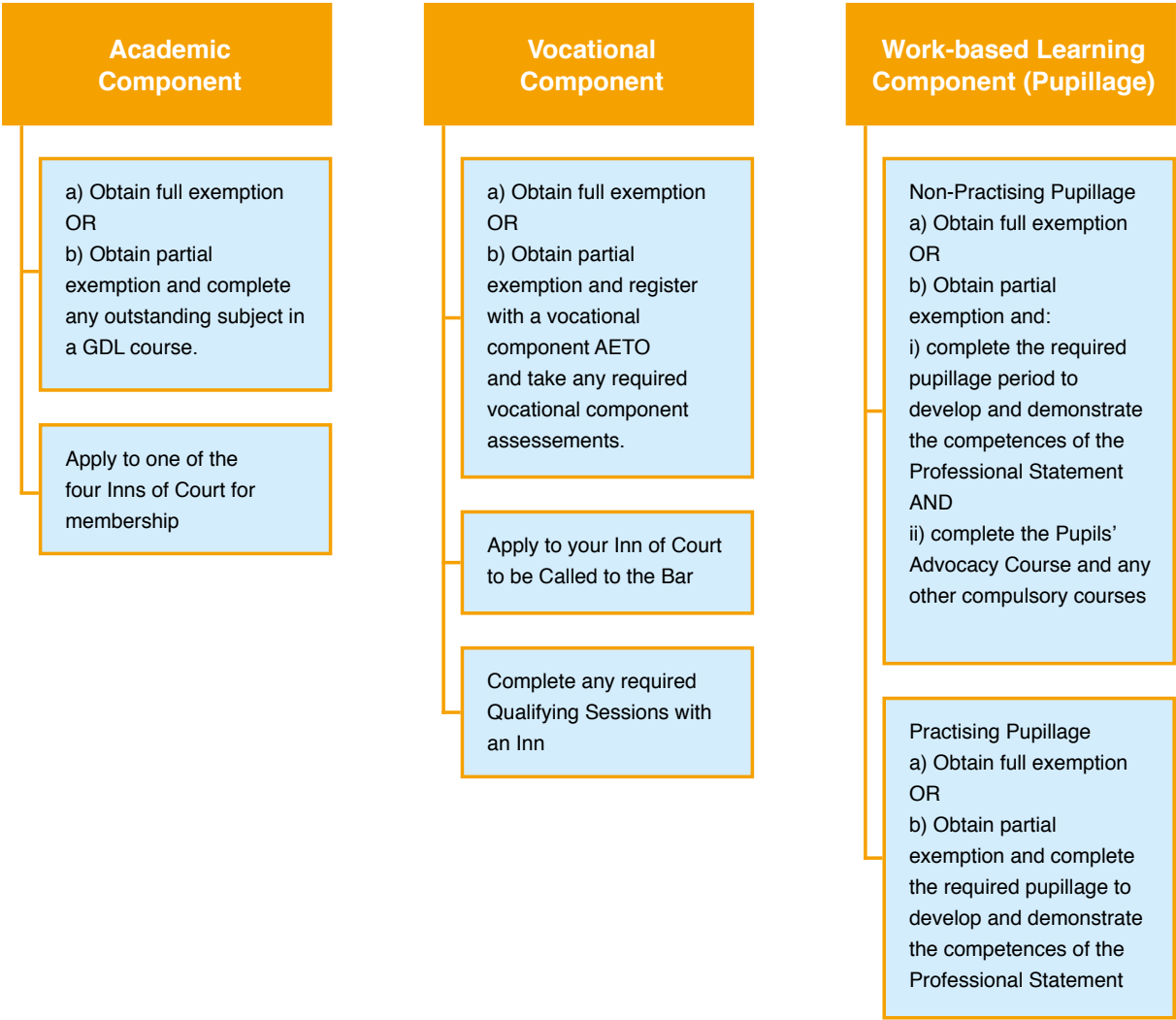
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## Introduction

Qualified solicitors, foreign qualified lawyers, legal academics and legal teachers/lecturers may now transfer to the Bar by way of an application.

At Clerksroom we are seeing an increasing number of enquiries from individuals looking to transfer to the Bar of England and Wales.

The below flowchart has been updated from the BSB guidance to demonstrate the potential route a successful applicant may follow to transfer to the Bar. Of course, the exact route will depend on the outcome of the applicant's application and the requirements which the BSB set, which will be based on the applicants experience and qualifications to date.



## Pros and cons of new system

The change in the transfer process and the removal of the requirement to complete the Bar Transfer Test has benefits and drawbacks. Some of the benefits being that the cost of the process is reduced and that each application will be assessed on its own merits based on the applicant's previous experience. Linked to this latter benefit is the fact that the application process requires a significant amount of detail and may take some time to complete.

However, it is very much worth dedicating the time to make your application as detailed and specific as possible evidencing that you meet the competencies in the Professional Statement. The reason for this is that unless you meet the very limited criteria set out below (*essentially you have been granted rights of audience by an Approved Regulator and are entitled to exercise those rights in relation to **all proceedings in all courts of England and Wales or are a Barristers of Northern Ireland who has successfully completed pupillage in Northern Ireland***), there is a distinct possibility that you will be required to undertake an element of pupillage in order to complete your transfer to the bar. As we also detail below, this means that, unless you can benefit from a BSB waiver from the mandatory advertising timetable, you will need to apply for pupillage alongside all other candidates, including those who require the full 12 months pupillage. The mandatory timetable requires that all offers of pupillage are made once a year; usually during May.

## The application

The application requires all qualifications and experience obtained to be detailed and these are assessed alongside the professional statement, which sets out the competences expected of a barrister<sup>1</sup>. The BSB will then decide if the applicant is exempt from some or all of the training requirements, including the academic, vocational or work based learning (pupillage) components.

All applications will be considered for full or partial exemptions, meaning that even if an applicant does not meet the requirements for a full exemption the BSB may grant a partial exemption, which still limits the requirements an applicant has to comply with. Furthermore, by considering all of the experience an applicant has alongside the professional competencies, it means the exemption can be tailored to the needs of the applicant.

The BSB has published guidance<sup>2</sup> on how to make an application to transfer to the Bar and details what information is required. There is separate guidance for: qualified foreign lawyers; law teachers; European Lawyers; and, transferring solicitors. So do ensure you are looking at the guidance which is most relevant to you and your individual circumstances.

It is also important to note that the BSB has recently announced several changes to the transfer process and their guidance has not yet been updated. Readers should take caution when looking at the BSB website as whilst the announcement<sup>3</sup> includes the most up to date process, some of the information on the BSB website and downloadable guidance has not yet been updated. Do note, all of the information contained within this particular note is up to date as of the date of publication.

<sup>1</sup> The Professional Statement can be viewed here: <https://www.barstandardsboard.org.uk/training-qualification/the-professional-statement.html>. This document is a good tool for any aspiring barrister or anyone considering making any application to the BSB for an exemption or waiver.

<sup>2</sup> <<https://www.barstandardsboard.org.uk/training-qualification/barrister-training-waivers-and-exemptions.html>> accessed on 23 August 2021

<sup>3</sup> <<https://www.barstandardsboard.org.uk/training-qualification/becoming-a-barrister/transferring-lawyers.html>> Accessed on 23 August 2021

## The application form


The application form is a BSB structured form, which is now online and accessible through the 'MyBar' portal for a fee of £440. It may be that the BSB are able to send you an off-line version of the form if you request it and would prefer to access it this way. It is recommended that the structure of the form is not deviated from and that all the information which is requested is supplied. This is important because this is the form that the assessors are used to using to evaluating an applicant and if you try to make changes to the layout or presentation, you risk alienating the assessor.

The BSB highlights that exemptions may vary and that greater weight may be given to the work and experience obtained in a common law jurisdiction<sup>4</sup>. Additionally, if an applicant's qualifications or experience is more than five years old, they will need to demonstrate how they have kept their knowledge and skills up to date.

As the application will be assessed against the professional statement it is vital that applicants take the time to work through their experience and qualifications and detail which competencies have been met; any experience detailed should clearly relate to the competencies. The BSB include a Professional Statement Mapping Document as an annex to their guidance note<sup>5</sup>, which may be useful to use or to guide an applicant's structure and formatting.

At section 10 of the application form, the applicant will be asked to upload a personal statement which should address the professional competencies. It is at this point that further information should be uploaded, in the form of a personal statement which should list any relevant role(s), responsibilities and experience gained. The personal statement should set out practical examples from employment; a detailed breakdown is key here and the application form specifically states: 'generalized statements will not be taken into consideration'.

The BSB use the following marking terminology when assessing an application against the competencies and this will be helpful to bear in mind whilst self-reflecting:

<b>Introductory</b>	Some high-level or basic coverage of the competence.
<b>Foundation</b>	Demonstration of knowledge of the competence to a minimum standard that will permit you to progress to the work-based learning component of training (pupillage).
<b>Threshold</b>	Demonstration of the competence to the Threshold Standard, as described in the Professional Statement.
<b>Threshold or above</b>	Further coverage of the competence beyond, or at, the level of the Threshold Standard.
	Demonstration of the competence other than at the levels specified above.

Applicants should include all of the following information within an application:

- Academic qualifications;
- Professional qualifications;
- Details of any other rights of audience;
- Practising experience;
- Employment details and duties; and
- Pro bono work and voluntary work.

<sup>4</sup> Anguilla, Antigua & Barbuda, Australia, Bahamas, Bangladesh, Barbados, Belize, Bermuda, Botswana, British Virgin Islands, Canada, Cayman Islands, Dominica, Ghana, Grenada, Hong Kong, India, Isle of Man, Israel, Jamaica, Malawi, Malaysia, Montserrat, Namibia, New Zealand, Nigeria, Northern Ireland, Pakistan, Papua New Guinea, Scotland, Singapore, South Africa, Sri Lanka, St Kitts & Nevis, St Lucia, St Vincent & the Grenadines, Trinidad & Tobago, Turks & Caicos, USA, Zambia, Zimbabwe.

<sup>5</sup> The Bar Standards Board, 'Online guidance for foreign qualified lawyers' <<https://www.barstandardsboard.org.uk/training-qualification/barrister-training-waivers-and-exemptions.html>> accessed on 2 September 2021

Along with supporting information, such as:

- Certificates of qualifications;
- References from supervisors or employers;
- References from teachers or lecturers;
- Professional licenses and certificates of good standing; and
- Academic CV or professional CV.
- Verified English translations of any document relied on which is not in English<sup>6</sup>.

## The BSB Handbook

In addition to the guidance provided by the BSB, another crucial piece of information is the BSB Handbook. The rules on qualification can be found in 'Part 4: Qualification Rules'<sup>7</sup>.

The BSB make it clear that an exemption from all or part of the training components may be granted, either unconditionally or subject to appropriate conditions<sup>8</sup>. In making the decision whether to grant a full or partial exemption, there will be a determination of the relevant knowledge and experience that the applicant has which makes further training unnecessary<sup>9</sup>. Should the BSB need any further information above and beyond the information provided within the application, they may make enquiries or request further information directly from the applicant to assist in their decision-making process<sup>10</sup>.

## A full exemption

The qualification rules, indicate that certain applicants, with certain experience, will be able to get a full exemption, this includes:

1. Applicants that have been granted rights of audience by an Approved Regulator and are entitled to exercise those rights in relation to all proceedings in all courts of England and Wales<sup>11</sup>;
2. Applicants that have been granted rights of audience by an Approved Regulator and are 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)<sup>12</sup>;
3. Barristers of Northern Ireland who have successfully completed pupillage in Northern Ireland<sup>13</sup>; and
4. A qualified Swiss lawyer, unless the matters covered by education and training substantially differ to the training covered in academic and vocational training in the UK and the knowledge acquired through their professional experience does not fully cover this gap<sup>14</sup>.

Should the applicant fall within one of these categories then the BSB will exempt them from any component of training which has not been fulfilled and authorise them to practise as a barrister, subject to them being admitted to an Inn and Called to the Bar<sup>15</sup>. It should be noted that full exemptions are **rare**. As set out above, it is not often that applicants will fit into one of the four categories above. The most common of the 4 will be number 1, for example, when an applicant is a qualified solicitor with **both** criminal and civil higher rights of audience.

<sup>6</sup> Ibid, rQ11

<sup>7</sup> <<https://www.barstandardsboard.org.uk/the-bsb-handbook.html?part=EF7C8717-3AB4-4120-AB72FA53D17C3F28&audience=&q=>> Accessed 2 September 2021

<sup>8</sup> The BSB Handbook, rQ9

<sup>9</sup> Ibid, rQ8

<sup>10</sup> Ibid, rQ12

<sup>11</sup> Ibid, rQ14

<sup>12</sup> Ibid, rQ14

<sup>13</sup> Ibid, rQ14

<sup>14</sup> Ibid, rQ14, rQ16

<sup>15</sup> Ibid, rQ13

An important point to note about category 2, is that the BSB may exceptionally require an applicant who falls into this category to do part of pupillage, if it considers this necessary, having regard particularly to the knowledge, professional experience and intended future practice of the applicant<sup>16</sup>. Based on anecdotal information collected from applicants over the last 18 months, it is clear that the BSB tend to exercise this caveat more often than not with a requirement for the applicant to undertake a period of pupillage.

## A partial exemption

The rules on partial exemptions, specifically mention the following categories of individuals:

1. An applicant who has been granted rights of audience by another Approved Regulator and is entitled to exercise those rights in relation to any class of proceedings in any of the Senior Courts or all proceedings in county courts or magistrates' courts in England and Wales<sup>17</sup>;
2. A Qualified Foreign Lawyer who has for a period for at least three years, regularly exercised full rights of audience in courts which administer law substantially similar to the common law of England and Wales<sup>18</sup>;
3. A teacher of the law of England and Wales of experience and academic distinction<sup>19</sup>.

Applicants who meet the level and experience of one of these three categories will be awarded an exemption from the academic and legal training and the vocational training and, should the BSB think it is appropriate, from part or all of pupillage<sup>20</sup>.

If the applicant does not fall into one of these categories or does not meet the level of experience detailed, it is still possible to obtain a partial exemption to the qualification rules by demonstrating your qualifications, knowledge and experience within the application form. The BSB will assess each application on a case-by-case basis and this is why it is imperative that you include details of all relevant experience, supporting documentation and references.

## Specific requirements for applicants who are teachers of law

If an applicant is a teacher of law in England and Wales and seeking to transfer, they will be required to provide the following information:

- 1) Proof of your academic achievements (an applicant will be expected to have gained a national or international reputation)<sup>21</sup>;
- 2) Proof of seniority, standing and distinction (an applicant will normally be expected to have reached at least the level of Senior Lecturer within a university)<sup>22</sup>;
- 3) References from at least one senior legal academic<sup>23</sup>; and
- 4) Academic CV<sup>24</sup>

<sup>16</sup> Ibid, rQ15

<sup>17</sup> Ibid, rQ24 (1)

<sup>18</sup> Ibid, rQ24 (2)

<sup>19</sup> Ibid, rQ24 (3)

<sup>20</sup> Ibid, rQ24

<sup>21</sup> The Bar Standards Board, 'Criteria and Guidelines for Transferring Qualified Lawyers'

< <https://www.barstandardsboard.org.uk/training-qualification/barrister-training-waivers-and-exemptions.html> > accessed 2 September 2021

<sup>22</sup> Ibid

<sup>23</sup> Ibid

<sup>24</sup> Ibid

## The mandatory timetable

As of the 1 November 2020, the BSB introduced the mandatory timetable for the pupillage process<sup>25</sup>. This is a fixed timetable which means that an Authorised Education and Training Provider (“AETO”) has to ensure that each stage of their advertising and recruitment process takes place in accordance with the published timetable which runs annually from November to May. This timetable means that an offer of pupillage may only be made and accepted in May each year (or at a time prescribed by the BSB), unless the AETO has successfully applied for a waiver from the rules<sup>26</sup>.

All applicants that are successfully in transferring via this route that are required to undertake pupillage by the BSB, must still operate within this timetable. This does mean that should an application be approved by the BSB in July and the applicant is awarded a reduction in pupillage down to three months, they will not be able to apply until for pupillage until January or accept an offer of pupillage until the following May.

The timetable is the same for all candidates applying for a pupillage and any transferring lawyers will still compete against candidates applying for a traditional twelve-month pupillage, despite the fact that they do not need a twelve-month pupillage and could start immediately. This is the main drawback with the new process; however, the BSB has committed to reviewing the mandatory timetable changes in November 2022<sup>27</sup>.

As mentioned above, the only way to operate outside of the mandatory timetable is with the permission of the BSB. This can be applied for by making an application for a waiver from the pupillage funding and advertising and recruitment requirements<sup>28</sup>. This application must be made by the AETO, not the pupillage candidate, and can be made by an application form with a fee, which is currently £100. What is worth noting here, is that the BSB has highlighted that the mere fact that a candidate has a reduction in their pupillage is not, in of itself, a good enough reason for a for a waiver from the advertising and/or funding requirements.

## Conclusion

Overall, the process and application form may look daunting and time consuming; but this is simply a hurdle which needs to be properly navigated in order to transfer to the Bar. When additional training and qualifications have been obtained, particularly those of such a high standard, why shouldn't it be acknowledged and recognised by the regulator?

If you are a transferring lawyer and/or you feel you fit into one of the categories mentioned within this guidance note and you would like to discuss the transfer process in more detail, Clerksroom is happy to assist. Please contact our London Manager, Kevin Morrow at [kevin.morrow@clerksroom.com](mailto:kevin.morrow@clerksroom.com) or on 0203 150 1491 or our Birmingham Manager, Russell Hobbs at [russell.hobbs@clerksroom.com](mailto:russell.hobbs@clerksroom.com) or on 01823 704087 and they will be able to handle any questions you may have about a potential transfer.

<sup>24</sup> Ibid

<sup>25</sup> The Bar Standards Board, 'Mandating the timetable for pupillage recruitment and written agreements for pupillage' (January 2021)

<<https://www.barstandardsboard.org.uk/uploads/assets/f0f22183-fb48-4381-9f3ff5ab86745b85/RecAd-Decision-Documents-January2020.pdf>> Accessed 2 September 2021

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