

Amendments to the Bar Course Aptitude Test

For approval by the Legal Services Board

This application is made in accordance with the requirements set out in the Legal Services Board's (LSB) Rules for Rule Change applications. The Bar Standards Board (BSB) wishes to provide the information below to support its application.

Any queries about this application should be made to:

Ms Hayley Gault
Senior Training Supervision Officer
HGault@barstandardsboard.org.uk

Or

Mr Christopher Young
Policy Manager (Quality Assurance)
CYoung@barstandardsboard.org.uk

Bar Standards Board
289-293 High Holborn
London
WC1V 7HZ
Tel: 020 7611 1444

Summary

1. This application seeks approval from the Legal Services Board (LSB) for amendments to the score which must be achieved in order to pass the Bar Course Aptitude Test (BCAT). The BCAT is a requirement for those who wish to enrol on the Bar Professional Training Course (BPTC), which is the vocational stage of training towards becoming a barrister. The BCAT was introduced in 2013 as a means of ensuring applicants to the BPTC have the analytical and critical reasoning skills necessary to succeed on the BPTC and thus have a reasonable prospect of progressing into a career at the Bar.
2. The current implementation of the BCAT is not achieving the objectives originally intended, but we demonstrate here that higher scores on the Test correlate well with success in the training, and provide evidence of the necessary intellectual skills to a more reliable extent than other proxies available. Training for the Bar is a small and prestigious market; we have identified a need to protect the interests of candidates in the current training system by ensuring that those with an exceptionally small chance of success do not needlessly commit to the substantial cost and time involved. For the future, we identify that this Test can provide a very significant source of objective evidence in our assessment of risks in an evolving market for training, and contribute directly to the evidence of competence required for authorisation.
3. Specifically, we are seeking to amend the cut score, which is the score required for a candidate to pass the Test. The current cut score is 37, and the proposed new cut score is 45. This change is intended to exclude students who are most unlikely to succeed on the BPTC and to avoid disruption of the learning experience of able students on the course caused by those who lack the critical thinking skills to participate fully.

Background

Current requirements

4. There are three stages of training towards becoming a barrister: the academic stage, the vocational stage, and the professional stage. The principal requirement of the vocational stage consists of successful completion of the BPTC at an approved training provider. The BPTC is a one year (full-time) or two year (part-time) course where students learn the skills necessary to prepare them to practise as a barrister, subject to the completion of the professional stage of training, including pupillage. The course comprises a mix of practical and knowledge-based skills.
5. The BSB introduced the aptitude test as a prerequisite for enrolment on the Bar Professional Training Course (BPTC) on the recommendations of the Neuberger Report on entry to the Bar (2007) and the Wood Review of the BVC (2009) The aim was to use a fair aptitude test which measured critical

thinking and analytical skills so that those without certain prerequisite skills for the profession would not undertake the BPTC.

6. Approval for the introduction of a Bar Course Aptitude Course (BCAT) was secured from the Legal Services Board in July 2012. The BSB committed to undertaking a comprehensive evaluation of its efficacy and impact over the first five years. The present application draws on evaluative work done so far.
7. The primary objective of the introduction of the BCAT was improvement of standards on entry to and exit from the BPTC. Whilst not directly a regulatory concern, we might expect a consequent increase in satisfaction with the training from both students and tutors, a reduction in failure rates, and hence greater confidence amongst those who are considering training for the Bar.
8. The BCAT was planned for implementation in 2013, for candidates entering the BPTC in September that year. A test fee of £150 was set for those candidates taking the test in the UK, £170 for those taking the test overseas. The test fee covers an administration charge for Pearson VUE and the full economic cost recovery by the BSB of administration and implementation cost for the test, over a period of five years, in accordance with the BSB's Fees and Charges policy. The initial cost of research and development for the test prior to 2013 was not accounted for in setting the candidate fee. The BCAT was introduced on 3 April 2013 and all BPTC students entering from autumn 2013 for the 2013/14 academic year onwards were required to pass the BCAT.
9. The previous Bar Training Regulations stated that before starting the vocational stage of training a person must, amongst other requirements, *have achieved a score of -1.34 or such score as substituted by the BSB from time to time in the [BCAT]*. However, with the introduction of the BSB Handbook in January 2014, the Bar Training Rules now state that:

“Before starting the vocational stage, a person must:

 1. *have completed (or been exempted under Section 4.B7 from) the Academic Stage; and*
 2. ***have successfully completed the Bar Course Aptitude Test which is set by the Bar Standards Board from time to time; and***
 3. *be a member of an Inn of Court.”*
10. Since the introduction of the BCAT, the cut score has remained at 37. This was originally identified, based on the BCAT pilot, as a score which would identify the bottom 10% of candidates who took the test and thereby exclude those at significant risk of failure of the BPTC.

Future Bar Training

11. The BSB has devised a programme of reform to training for the Bar which was initiated to reflect our adoption of a new, less prescriptive approach to

regulation. The programme, called Future Bar Training¹, will involve substantial changes to all stages of training for the Bar, which will roll out from 2017.

12. In October 2015 the BSB published a Professional Statement (Annexe 4) which describes the knowledge, skills and attributes that all barristers should have on “day one” of practice (ie upon the issue of a full qualification certificate, on which basis they may apply for a full practising certificate). The Statement represents our move towards a more outcomes-focused approach to the regulation of standards at the point of entry to the profession and is an essential part of Future Bar Training. The Statement will help towards making qualification routes to the Bar more flexible.

Our Proposal

The problem we are seeking to address

13. We have identified in our Regulatory Risk Index² that inadequate training and preparation for practice is a risk to our regulatory objectives. The interdependency of students in the learning environment on a course such as the BPTC is such that the presence of weaker students is widely reported by other students to have a detrimental effect on their learning experience. This has been consistently observed as part of annual monitoring visits to BPTC providers and through the 2010/11 Student Perception of Course Surveys³.
14. There is a regulatory interest in ensuring that the training inspires confidence for the widest pool of potential candidates, who are making a substantial commitment in participating and whose experience of the training can be influenced significantly by the ability of those training alongside them to participate.
15. The Bar is perceived as a high status profession which attracts interest as a career for many irrespective of their suitability or understanding of what the profession entails. The Bar is a career into which candidates are persuaded by wider cultural expectations beyond candidates’ own career aspirations. The profession plays a significant role in securing access to justice for consumers. It is also intellectually very demanding. Not all aspiring barristers have the aptitude to meet a competent standard. Training to become a barrister is intensive and takes significant time; it is therefore expensive. If candidates are not to waste significant time and money on training – ie by committing to and later failing the BPTC – adequate selection processes are required. There are also wider concerns about social justice and diversity in that the risk of undertaking the expense of the BPTC is likely to bear more heavily on those from disadvantaged or non-traditional backgrounds.

¹ For more information on Future Bar Training, see the [BSB’s website](#).

² Available [here](#).

³ Annexed to the BSB’s 2012 application to the LSB – available [here](#).

16. The evidence from the past five years of BPTC students is that the demands of the course are significant; around 40% of students enrolled onto the BPTC in 2014 have yet to pass the course⁴.
17. BPTC providers have their own selection processes, and have in recent years stated an increased focus on quality rather than quantity of applicants – an approach borne out by the fact that many providers no longer recruit to their maximum validated numbers – but they have a strong financial interest in recruitment. The BSB also has its own qualification requirements, ie a minimum of 2:2 undergraduate degree. However, it is clear that the combination of providers' own selection process and the BSB's requirements does not adequately ensure that the candidates making the investment in the BPTC are always those most likely to progress successfully.
18. We have already introduced a number of interventions to help address this problem. This includes the existing academic qualification requirements of a 2:2. There is evidence that some providers have effectively raised their threshold to a 2:1; we have concerns for the consequences of such a measure on inclusion. There is a wealth of independent data to suggest that raising the minimum academic achievement required by the BSB e.g. to a 2.1 could potentially have a disproportionate impact on students from protected characteristic groups. We have included with this application data relating to BPTC students and their degree classification which reinforces this (Annexe 6).
19. We have also published key statistics relating to the BPTC. The adoption of centrally-assessed examinations on the BPTC in 2011/12 provided the basis upon which a clearer evidence base of variable candidate performance could be developed. The first opportunity to publish and analyse this evidence was in 2015.
20. It is envisaged that the key statistics document will provide clarity regarding success rates, which will help motivate higher performance by providers through the use of appropriate entry requirements and ensuring a high quality of training. However, we remain concerned about this as an intervention, as it could have potential unintended consequences, for example by encouraging greater exclusivity in recruitment practices.
21. We also give potential BPTC candidates a health warning which describes the high level of commitment, resilience and ability required for both training for and a career at the Bar. However, our experience and anecdotes derived from other similar professions suggest that many candidates, especially younger candidates, do not necessarily make entirely rational judgements about their prospects for success when they commit to such a challenging programme of

⁴ [BPTC Key Statistics Report 2016](#), p3.

study. Moreover, candidates place an arguably reasonable expectation on the provider and the regulator to exercise a duty of care in only recruiting suitable candidates.

The BCAT today

22. We have over time given careful consideration to the availability of more focused and reliable predictors of intellectual ability. The Watson Glaser type test has been found to be viable and acceptable as an intervention in a number of professional domains for precisely the purpose intended here.

23. When it was first implemented, the BSB commissioned a review of the impact of introducing the BCAT against its intended objectives, from which a first evaluation report was produced in 2015. The evaluation report, which is annexed to this application (Annexe 1) and hereafter referred to as “the Report”, examined the first full year of implementation of the BCAT. It focused on:

- the performance of the BCAT as a predictor of a student’s future performance on the BPTC;
- the impact of the BCAT – at the current pass rate – in preventing weaker students from starting the BPTC; and
- the likely equality and diversity implications if the pass mark is raised, and to what level it could be justifiably raised while minimising potential negative impacts on different protected characteristic groups and students from non-traditional backgrounds.

24. The Report investigated what impact the BCAT has had to date on entry and exit standards on the BPTC, and on the profile of students on the course by reference to their protected characteristics. The Report also investigated students’ and BPTC providers’ current perceptions of the BCAT. The key findings were:

- BPTC student data suggests the introduction of the BCAT at a pass mark of 37 has had no impact on the profile of students on the course.
- Analysis of data on enrolments onto the BPTC of students does not reveal any statistically significant change in degree class or degree institution following the introduction of the BCAT.
- There has not been any increase in the pass rates on the BPTC since the introduction of the BCAT as an entry requirement – pass rates on the BPTC declined between both 2011/12 to 2012/13 and 2012/13 to 2013/14
- There is little evidence from interviews with students who failed the BCAT at the first attempt that the introduction of the BCAT is influencing their career / routing decisions.
- BPTC provider staff interviewed felt that the introduction of the BCAT had not had any impact on their selection procedures, because the test

at the time was deemed too easy to pass, and was not an effective tool to improve standards beyond existing admissions and/or selection procedures.

25. Other key findings of the report were:

- That the score that a student obtains in the BCAT is a very strong predictor of their performance on the BPTC.
- Data from the 2013/14 BPTC cohort shows that BCAT score and BPTC overall score are significantly positively correlated ($r=0.546$), with those who scored higher on the BCAT tending to have a higher BPTC overall score.
- Additionally, regression analysis was undertaken to determine the statistical reliability of BCAT as a predictive indicator of performance. This indicates that BCAT score significantly predicts both BPTC final overall score and final overall grade.
- Regression analysis also indicates that BCAT score increases predictive validity beyond that of educational variables such as degree institution and degree classification. It is also a fairer measure of aptitude as the BCAT is a universal test and does not discriminate against those from non-traditional academic backgrounds.
- Additional analysis has shown that the BCAT aligns with the skills required in the BPTC course specification requirements.

26. Further to the findings in the Report regarding the alignment of the BCAT and BPTC course specification requirements, we undertook further analysis of the BCAT in relation to the BSB's Professional Statement, Threshold Standard and Competences (Annexe 5). The analysis identifies that the BCAT is assessing attributes in a fair, reliable and valid manner, that are needed on "day one" as a barrister, as defined by the Professional Statement, threshold standard and competences. It concludes that 41% of the Professional Statement could be directly mapped to the BCAT content, which is a satisfactory proportion of mapping for a test of this nature.

27. We reviewed the Report in the autumn of 2015, and undertook further investigation into the options available for meeting the objectives of the Test, incorporating more recent pass rate data (ie information from the 2014/15 cohort) to inform our analysis. The LSB was briefed on the detail of our review and options analysis through this period. The BCAT was temporarily suspended from November 2015 to March 2016 to give time for careful consideration of the Test's future. In February 2016, the matter was considered by the Board. We decided, based on the Report's findings that the test was an effective predictor of BPTC performance, to retain the Test for an interim period with candidates being informed of their Test score (where previously they were only advised of pass or fail) and the likelihood of their passing the course. In April 2016 the BCAT was re-introduced with the

previous cut score of 37 on this basis. The rationale for informing candidates of their exact score, along with the grades of past BPTC students with a similar BCAT score, was to help them make an even more informed decision about whether to proceed with applying for the course. A sample of the score sheet is annexed to this application (Annexe 7).

28. We concluded that the BCAT is a very effective test, notwithstanding the immediate problem of its calibration.

Options to address the regulatory problem

29. Having identified that the BCAT was not fulfilling its intended purpose, and that the issue is with calibration, we revisited the wider problems that the BCAT was intended to address.

30. We considered the following options to address the regulatory problem:

- Continuing to rely on prior academic qualifications alone – as mentioned above, it is clear that this is not currently an adequate filter on its own. Raising the minimum qualification requirements could also have an impact on equality and diversity. In addition, degree classifications are a measure of academic achievement rather than of the skills necessary to succeed on the BPTC or at a career at the Bar.
- Relying on the publication of BPTC key statistics to inform and dissuade unsuitable candidates – this has yet to show its worth as the first round of statistics was only published at the end of 2015. Again, it is clear that the combination of the minimum academic requirement and the publication of key statistics is not an adequate filter but the addition of transparency in the form of the key statistics might lead to improvement in the proportion of candidates that pass. We have important concerns about the risk of the perverse impact of these measures without having a more objective way of calibrating aptitude for the BPTC; providers could, in an effort to achieve better results, focus their recruitment on applicants from traditional backgrounds which might have a negative effect on those from non-traditional backgrounds.
- BCAT – the adoption of a suitably well-founded and focused test would enable us to more carefully calibrate a threshold of competence and provide a greater degree of objectivity in our monitoring and its impact on diversity. It is this latter approach which was adopted as the basis of the BSB's application to the LSB in 2012. The evidence we submit here demonstrates that the BCAT as introduced in 2012 was well-suited to the purpose described above, but it was not calibrated appropriately. Nevertheless, the three years since the BCAT's implementation have provided a further extensive evidence base for us

to be able to examine and analyse the regulatory problem described above.

31. With this in mind, we considered the following options with regard to the BCAT:

- Reverting to a previous approach to candidate selection by removing the BCAT – As stated above, the existing interventions are not sufficient on their own to preclude unsuitable candidates from enrolling on the BPTC. Further to this, evidence presented here demonstrates that degree classification of a 1st/2:1 is not as good a predictor of performance on the BPTC as BCAT result; indeed, the BCAT is the strongest individual predictor of performance on the BPTC compared to other factors.
- Adopting a different testing instrument - As noted above, evidence suggests that the BCAT in its current form is a valid testing instrument. It is a better predictor of performance on the BPTC than other available measures of aptitude for the profession and its preparatory training (eg degree classification). In addition, the skills tested by the BCAT are aligned with those required for the BPTC and with the requirements of the Professional Statement.
- Retaining the BCAT alongside other available interventions - the BCAT in the form implemented in 2016 provides candidates with information to help make an informed choice about whether to proceed with applying for the BPTC. However, the Report demonstrates that the BCAT with its current cut score does not exclude a significant number of individuals who are likely to fail the BPTC from enrolling on the course. As a result, it is not having an effect on BPTC pass rates.
- Recalibrating the BCAT alongside other interventions – the BCAT is the best single indicator of BPTC performance currently available and it now provides candidates with useful information about their likely performance on the BPTC based on their score, allowing them to make an informed choice about how to proceed.

In considering a change to the cut score, the impact that such a change would have on equality and diversity was examined. The Report found that candidates from black and minority ethnic (BAME) backgrounds performed worse on average on the BCAT. This effect has been documented elsewhere in relation to the type of test (Watson Glaser) and is a phenomenon that we have taken into account in considering the calibration of the cut score and the proportionality of the barriers to entry that are created by the BCAT. Further analysis on the impact a raised cut score would have on these candidates was

undertaken, and is annexed to this application (Annexe 3) and discussed further below.

Consultation

32. We have been engaged with consultation broadly on education and training for the Bar, and given the relatively technical nature of the change, we did not consider it was appropriate to undertake a formal separate consultation on the BCAT.
33. The BCAT was included as part of the Future Bar Training consultation⁵ in autumn 2015. The responses to the consultation which mentioned the BCAT generally said that they felt the BCAT was not fit for purpose in its current format and that it needed to be reviewed. Several respondents stated that academic qualifications were not a sufficient measure for aptitude on the BPTC as they only demonstrate intellectual ability rather than the aptitude for the skills the BPTC requires. Several respondents also said that any intervention that filtered students applying for the BPTC must not have an adverse impact on equality and diversity. There was much opposition amongst respondents to the idea of raising the minimum academic requirement to 2:1. This was largely due to concerns about reducing diversity at the Bar, and the perceived inconsistencies between the standards of different universities. A particular concern for a number of respondents was that the requirement of an upper second class degree may unduly restrict access to the profession and have a disproportionate impact on students from disadvantaged backgrounds
34. Further to this consultation, Work Psychology Group consulted provider and student representatives as part of their evidence gathering for the evaluation report discussed later in this application and annexed to this application (Annexe 1). This helped us to understand the nature of the problem we need to address.

Raising the cut score

35. We propose to raise the cut score for the BCAT and implement policies appropriate to recalibration of the test, having considered the substantial data now gathered. The cut score is not currently enshrined in the Bar Training Rules but is defined within the requirements and guidance published online by the BSB. These changes constitute an amendment to the regulatory arrangements agreed by the LSB in their response to the BSB's application to introduce the BCAT in 2012. We propose to make the following amendment to of the Bar Training Rules to clarify the rule regarding the BCAT (expanded upon in Annexe 8 to this application):

⁵ A summary of responses to the consultation is available [here](#).

“Before starting the vocational stage, a person must:

- 1. have completed (or been exempted under Section 4.B7 from) the Academic Stage; and*
- 2. have successfully completed the Bar Course Aptitude Test, **the pass score for which is set by the Bar Standards Board from time to time; and***
- 3. be a member of an Inn of Court.”*

36. The performance evaluation section of the Report investigated the validity of the BCAT at its current pass mark, and what the likely impact of changes to the existing pass mark would be for standards on the BPTC. The key findings were:

- At the current pass mark for the BCAT, in 2012/13 only 0.6% (13 students) were unable to pass the BCAT after one or more attempts.
- The impact of setting the pass mark at 38, 39, 40, 43 or 46 for the 2013/14 BPTC cohort was examined. The analysis identified 46 as the most effective pass mark, as it would have provided a marked reduction in the number of students progressing onto the BPTC who subsequently failed it, without creating a significant barrier for students who would have done well on the BPTC.

37. With the data then available on 2014 BPTC grades, this pass mark would have excluded an additional 135 students from the BPTC, and in 2014 would have reduced the numbers of students failing to pass the BPTC by 20.7% (81 students)

38. We identified two areas of concern in adopting a pass mark of 46. First, there was concern (identified in the Report) that a pass mark of 46 might have an adverse impact on students from BAME backgrounds, who performed worse (on average) on the BCAT. Second, that a pass mark of 46 excluded too high a proportion of students who would have gone on to pass the BPTC (40% of those who would have been excluded at a pass mark of 46 went on to pass the course in 2014, even before resits were taken into account. In response to these concerns, additional analysis was undertaken to:

- investigate the impact of further possible pass marks not evaluated as part of the performance evaluation, and
- investigate any adverse impact on BAME candidates using the two additional years' worth of BCAT results which were available.

39. Further analysis indicated that of those candidates in 2013/14 who later achieved a grade of “Competent” on the BPTC, 10% scored less than 45 on the BCAT. This suggests that a cut score of 45 is associated with a minimum BPTC grade of “Competent”, ie the lowest passing grade. A cut score of 46

would be associated with a grade of “Very Competent”. This is explored further in the additional analysis annexed to this application (Annexe 2).

40. The impact of potential pass marks at 44, 45, and 46 was examined, with only a pass mark of 46 producing a significant adverse impact related to any protected characteristics, with ethnicity the only characteristic affected. This is explored further in the Equality Impact Assessment annexed to this application (Annexe 3).
41. The data indicated that in 2013/14 and 2014/15 a pass mark of 45 would have reduced the number of students progressing onto the BPTC who subsequently failed it by 19.6%. Of those who would have been excluded, 27.1% would have passed with a grade of “Very Competent” or “Outstanding” and 49.2% would have passed with a grade of “Competent”. However, of the BPTC students in 2013/14 and 2014/15 who scored less than 45 on the BCAT, only 3% went on to obtain pupillage, and of those who scored less than 45 and achieved a grade of “Competent”, only 2% went on to obtain pupillage. We recognise that raising the cut score might exclude a very small number of people who might go onto obtain pupillage. It is conceivable that a candidate could present convincing evidence that they meet the requirements of the Professional Statement and it is always open to them to apply for a waiver from the BCAT (and any other) requirement on this basis. However, while the BCAT is a predictor of competence, it is unlikely that we would accept alternative *predictive* evidence – the candidate would need to demonstrate *actual* competence. There is an alternative route to the Bar in the form of the Bar Transfer Test for those already qualified as legal professionals.
42. **From this analysis, we have concluded that the optimum pass mark will be 45.**
43. This recalibration of the cut score is founded on a sufficiently substantial body of evidence to give assurance that no further alteration will be necessary in the foreseeable future. The data we have from the 2013/14 and 2014/15 cohorts on the BPTC is very consistent in indicating that a cut score of 45 would have significantly increased effectiveness of the BCAT in excluding students less likely to pass the BPTC from the course. This is further mentioned in the risk analysis below.

The role of the BCAT in future training paths

44. We have confirmed the relevance of the BCAT to our future approach to regulation. While the full outcome of the BSB’s Future Bar Training programme is not established, we show in this application that the BCAT aligns well with the Professional Statement. The Test will have value for all potential future routes to the Bar as a means of ensuring candidates have the necessary aptitude at the point of entry to the profession. It is also a universal

test, unlike degree classification and other measures of ability, which we anticipate incorporating in any of the potential pathways that are now under consideration.

45. We propose to remove the requirement that a candidate must be registered with BarSAS, which is the application system for the BPTC. This would make the BCAT available to anyone who wishes to measure their aptitude for a career at the Bar, not just BPTC applicants as it is currently. Doing so would allow an individual the opportunity to make an informed decision at any stage in considering their academic or professional career, and the five-year validity of a candidate's result in the BCAT means they would not have to retake the test at the point of application to the BPTC. We would most likely seek to distinguish between BPTC applicants and non-BPTC applicants for the purpose of data analysis to ensure that data is directly comparable with past years.

Risk analysis

46. The table below outlines the risks identified as being associated with implementing a more effective BCAT.

Identified risk	Impact	Proposed mitigation
Candidates who fail the test and are less able to afford to retake maybe at a disadvantage relative to more wealthy candidates who can attempt the test more frequently	Adverse impact on students from lower socio-economic backgrounds resulting in potential under-representation of those groups on the BPTC and the profession	<p>It is proposed to introduce a limit to the number of attempts a candidate may make at the BCAT in a given year. Currently, there is no limit to the number of times a candidate may take the BCAT. The only stipulation is that they must leave at least 30 days between each attempt. It is proposed to reduce the number of attempts to a maximum of three in a year. This would help to reduce the disparity between candidates from different socio-economic backgrounds.</p> <p>Many other tests of this type have a restricted number of attempts; the UK Clinical Aptitude Test (UKCAT) and the Law National Aptitude Test (LNAT) for example have just one permitted attempt. Other tests such as the Graduate Management Admission Text (GMAT) have a maximum of five attempts in a 12 month cycle.</p> <p>A practice version of the BCAT is also available which is free and can be taken as many times as a candidates wishes.</p>
Pressure to retake the BCAT to get a higher score despite already passing	Adverse impact on students from lower socio-economic backgrounds, resulting in potential under-representation of those groups on the BPTC and the profession	As above, limiting the number of attempts would reduce potential disparity between candidates.

<p>High BPTC failure rates</p>	<p>Candidates committing a significant amount of time, effort and money in a course or career to which they may be unsuited</p>	<p>The raised cut score will decrease the number of students who would go on to fail the BPTC from entering the course.</p> <p>Currently the BCAT is only open to BPTC applicants. Allowing anyone to take the test, at any stage of their academic career, opens up the opportunity for potential students to get a measure of their aptitude for the BPTC and allows them the opportunity to make an informed decision as early as possible on how to proceed with their academic or professional expectations.</p> <p>In order to maintain consistency with data across the previous years of BCAT results, the two groups of candidates (BPTC applicants and non-BPTC applicants) could be separated out to enable meaningful analysis.</p>
<p>Cost of the test being prohibitive to candidates from lower socio-economic backgrounds</p>	<p>Candidates from lower socio-economic backgrounds being under-represented on the BPTC and subsequently in the profession</p>	<p>The current fee for the test is based on the aim of cost recovery rather than on making any profit. We also consider the cost to be proportionate given the much more significant cost of the BPTC – the BCAT helps candidates to avoid the risk of making substantial investment in the course when they have little prospect of success. All BSB Fees are regulatory reviewed in accordance with our Fees and Charges policy.</p>
<p>Inaccurate calibration of BCAT cut score</p>	<p>New cut score not having desired effect; BSB having to re-apply to LSB for further changes</p>	<p>We do not envisage that this is a likely risk. The body of evidence which supports a cut score of 45 is substantial. It enables the BSB to calibrate the BCAT alongside other implementations of the Watson Glaser test, which itself has independent academic support of its reliability. Nevertheless we will continue to collect and analyse data undertake periodic review, the first of which will reflect the original 5 year commitment i.e. in 2018.</p>

The Regulatory Objectives

47. The BSB strives to **encourage an independent, strong, diverse and effective legal profession**. While the BCAT is a barrier to entry to the profession, because not all candidates will be able to fulfil their career aspirations and the new cut score will remove a significant number of such candidates, we are confident, based on the evidence presented in this application, that the BCAT with its new cut score will operate effectively and select appropriately for the skills that are fundamental to the work of a barrister. Further to this, as identified in the equality impact analysis, any adverse discriminatory impact on protected groups with the implementation proposed here is minimal and justified. We therefore think that the proposed changes would only have a minimal negative impact on this objective and will be proportionate to the aim we seek to achieve. We also believe that this objective is positively impacted in that the BCAT provides a better and fairer proxy of aptitude where there are known and greater problems in relying on other measures, such as degree classification.
48. As with other professions which require in-depth and extensive training, the risks associated with the path to qualification are likely to bear more heavily upon those with non-traditional backgrounds. Therefore a lack of attention to securing confidence amongst candidates in the training is likely to lead to an evolution of the profession that does not reflect the diversity of the community they represent. The BCAT offers a very reliable indicator of likely future success and moreover offers a more reliable measure for training organisations who otherwise face a substantial challenge in looking beyond academic degree.
49. Our proposed intervention would **protect and promote the public interest and protect and promote the interests of consumers** by helping to sustain confidence in the training system. By contributing to a reduction in failure rates on the BPTC, the BCAT is expected to promote confidence amongst prospective barristers that the financial and time commitment to training is worthwhile; this includes protecting their interests as consumers of legal training provision. The change would promote diversity, with increased confidence in training enabling the profession to evolve into one which does reflect the diversity of the community they represent. We also believe that our proposal helps to promote a quality learning experience that underpins high standards in practice.
50. We do not think that raising the cut score will have any impact on the other regulatory objectives. It is envisaged that the change could have a potential impact on **promoting competition in the provision of services** in affecting the number and quality of candidates passing the test and therefore progressing through training, which could have an impact on training

providers; however, those who do apply for the BPTC are likely to be competent candidates.

The Better Regulation Principles

Transparency

51. We are aiming for an objective and transparent way of assessing competence. The Professional Statement provides a clear point of reference with regards to the skills and competence required from all barristers from “day one” of their professional practice. We have shown in this application that the BCAT maps to the required intellectual skills as set out in the Professional Statement, and that it does so with good predictive value, where alternatives do not.
52. We now publish a wealth of data on performance on the BPTC which identifies clearly the attainment gap for those who are unsuited to the course. This includes the information given to candidates when they receive their BCAT result. The BSB will continue to monitor the impact of the BCAT, particularly the impact on equality and diversity. We have committed to publishing data on the outcomes of training and standards attained year on year, permitting a greater level of scrutiny of our role and that of the training providers. We will also commit to including BCAT analysis as part of the BPTC Key Statistics in future.
53. We have consulted with BPTC stakeholders, including providers and current and prospective students, as part of the BCAT Impact and Performance Evaluation to ensure we have a full understanding of the issues relating to the BCAT.

Accountability

54. The policies surrounding the BCAT, including this proposal, have been subject to internal scrutiny. The Board is committed to developing its effective oversight of education & training to meet the BSB’s regulatory objectives, and at present it does so through the Education & Training Committee. The Committee has a limited life while the Future Bar Training programme is delivered, and thereafter will be disbanded with the Board adopting direct oversight. Closer scrutiny is provided for the Board by the Performance Resources and Planning Committee (PRP), while the Governance Risk and Audit Committee (GRA) supplies a degree of independent challenge and audit.
55. We have also invited external independent evaluation through the Report, which was performed by Work Psychology Group, and through consultation with Rachel McCloy, an occupational psychologist at Reading University. We will continue to draw on independent and external expertise in the development and oversight of our evaluation work, the evaluation itself being done in-house.

Proportionality

56. We consider that raising the cut score of the BCAT is a proportionate way to address the issues outlined in paragraph 13 above. It is also important that those unsuited to a career at the Bar make informed decisions early on in their career before making substantial investment into training. A well-calibrated BCAT is the best predictor of success on the BPTC and more reliable as a means of informing a candidate's decision than other predictors. We have adopted the well-established and widely accepted "four-fifths rule" in assessing proportionality⁶.

Consistency and targeting

57. Our current and intended arrangements will require all candidates to pass the BCAT before enrolling on the BPTC. Only by doing so can we ensure fairness and consistency.

58. The BCAT is a universal means of assessing aptitude for attaining several important standards in the Professional Statement. Other available measures of ability such as degree classification are more variable in their reliability. Having a universal test will become even more relevant as the BSB moves towards more flexible routes of qualification, in accordance with the LSB's Statutory Guidance on education and training.

59. In addition, allowing anyone to take the Test opens up the opportunity for students to get a measure of their aptitude for the BPTC at any stage in their academic career and allows students the opportunity to make an informed decision as early as possible.

Desired outcomes

60. The primary objective of the introduction of the BCAT was improvement of standards on the BPTC, evidenced by a reduction in failure rates. We have set out the wider implications of addressing this outcome.

61. We have shown that this objective will be met by raising the cut score to 45. To measure success, we will continue to collect, analyse and publish data, with particular focus on the impact of the raised cut score on groups with protected characteristics.

62. We are considering several options for future paths to qualification and expect changes as a result. We think that the BCAT will prove to be of increasing importance for fair selection of candidates. Whichever training route is pursued, we expect that the BCAT will be a necessary tool to support recruitment.

⁶ For more information on the "four-fifths rule", see: Equal Employment Opportunity Commission, Department of Labor, & Department of Justice. (1978) [Uniform guidelines on employee selection procedures](#)

63. Prior to 2016, a BCAT result was valid for five years. When the BCAT was re-opened in April 2016 we decided that it should only be valid for one year– ie for entry to the BPTC for the academic year 2016/17 – in anticipation of the increase in the cut score, in view of the risk of a perverse incentive for candidates to take the test before the cut score is raised. Candidates (circa 1200) who passed the BCAT in 2013-15 and have not enrolled on the BPTC will retain their pass status should they apply to the BPTC within this five-year validity period. We plan for the revised BCAT to continue to be valid for five years.

Evaluation

64. We will continue to evaluate the effectiveness of the BCAT, as demonstrated in the Report, after the new cut score is implemented. Future analysis will be done in-house as we have designed approaches to data gathering and analysis which will allow us to do so as a matter of course. Data relating to the BCAT will be included in future BPTC Key Statistics publications.

65. Further to this, the opportunity is just now emerging to examine the relationship between BCAT score and later career development; until now this has not been possible due to the five-year window for BPTC graduates to obtain pupillage. We also plan to examine the impact of allowing candidates to know their exact BCAT scores alongside information about the BPTC performance of past candidates with a similar score. We commit to involving external independent input into the evaluation process alongside our own in-house analysis, including evaluation done by our supplier Pearson VUE’s Talent Lens team.

Other regulators

66. The proposed alterations to the BCAT are not expected to have an effect on other approved regulators. The BSB published and alerted other stakeholders to its intention to apply to the LSB to amend the cut score in March 2016 and no response has been received from any of the other regulators.

Implementation timetable and operational readiness

67. The proposed timetable for implementation of the changes is as follows:

10 August 2016	Submission of application for rule change to LSB
August - October 2016	LSB approval period
October - November 2016	Pearson VUE to make the changes to the BCAT (6 weeks)
October - December 2016	Publicising the new cut score

December 2016	BCAT with new cut score available to applicants
April 2018	Five-year review of BCAT

68. Pearson VUE has indicated that it will take around six weeks to amend the cut score to the BCAT. We expect that, subject to normal timescales for approval processes, the BCAT with the new cut score would be available from December 2016, when the BCAT normally re-opens for the next academic cycle. However, we foresee no disadvantage in a delay as late as April 2017. As the general format of the BCAT would remain the same, it would only require minor changes to literature associated with the test, such as the BSB's website and the BCAT handbook. The change would also be codified in the BPTC Handbook which is currently being rewritten.

69. We will seek to adequately publicise the change to the cut score prior to releasing the test to candidates. This would involve issuing a press release and announcing the change on the BSB's website as well as on the Pearson VUE website associated with the BCAT.

70. We will also notify all the BPTC providers of the change to the cut score. The BSB has already announced its intention to make these changes, subject to approval from the LSB, so key stakeholders are already aware of the potential change. Further to this, the BCAT has already excited interest in the legal press so though that medium we will be able to reach students and providers effectively.

71. It is assumed that at the time of the implementation of the new cut score the BSB will receive an increase in queries regarding the score and other new policies regarding the BCAT, but that this would reduce in time.

72. The BSB's BCAT team currently receives around one query per month regarding failure of the BCAT, out of around 100 email or telephone queries about the BCAT generally (including requests for reasonable adjustments). Based on figures outlined in the Adverse Impact Analysis, it is estimated that the number of candidates failing the BCAT would increase sevenfold, resulting in a potential 7 or so related queries per month. It is difficult to estimate the impact on resources of opening up the BCAT more widely as the number of candidates remains an unknown quantity. However, we are confident that we would be able to continue to offer a high level of service in this regard by adjusting our resourcing arrangements accordingly.

Annexes

Annexe 1: BCAT Impact and Performance Evaluation April 2015 ('the Report')

Annexe 2: BCAT Cut Score Analysis

Annexe 3: Equality Impact Assessment

Annexe 4: Professional Statement *(NB the BSB's Threshold Standard and Competences which accompany the Professional Statement will be published in September 2016).*

Annexe 5: Validation of the BCAT against the Professional Statement, Threshold Standard and Competences

Annexe 6: Degree Classification of BPTC Students

Annexe 7: Sample BCAT candidate score sheet

Annexe 8: Extract from the Bar Training Rules with annotated amendment