

Equality Impact Assessment
The Bar Course Aptitude Test (BCAT) – updated post formal consultation

Date of Assessment	First drafted 2009, updated June 2010, and revised following receipt of the report on the final pilot November 2011. This version updated according to new format and following the consultation December 2011 – February 2012
Assessor Name & Job Title	Dr Valerie Shrimplin Head of Education Standards, BSB
Name of Policy/Function to be Assessed	The Bar Course Aptitude Test ('BCAT') The proposed change in the entry requirements for the Bar Professional Training Course to require all students to demonstrate that they have attained the minimum specified threshold on the BCAT. The Test will be available in over 150 centres in the UK and in 165 countries worldwide, at a cost of approximately £60.
Aim/Purpose of Policy	<p>The aim of this proposal is to ensure that only those with adequate critical reasoning, language and other skills can undertake the Bar Professional Training Course (BPTC). This will enable the BSB to fulfil its regulatory role for setting and monitoring standards in relation to entry to the Bar and education and training for Barristers, and ensuring that the outcomes of the course are met.</p> <p>Existing Entry Requirements The new Bar Professional Training Course was put in place from Academic Year 2010-11. As a result of the Wood Review of the BVC (2007-08), standards on the course were raised, including at entry, on exit, and during the course itself. The previous policy regarding entry requirements specified academic and degree qualifications, in addition to Inn membership, as specified in the Bar Training Regulations (BTR18 - BTR26). The present entry requirements have proved unworkable, for a variety of reasons.</p> <p>Rationale for propose new policy Practice at the Bar demands a high level of ability in critical reasoning, including the written and oral use of the English language. Experience has shown that not all those who meet the current entry requirements are suitable to undertake the bar Course, as demonstrated by the high first time fail rates, which have increased with the raised standards of the new BPTC. The Test is not designed specifically to cap numbers but to ensure the legitimate aim that only suitable candidates with a reasonable prospect of passing undertake the course. This is important not</p>

only in terms of protecting weak students from the high cost of failure but also because the presence of weak students impacts on the learning experience of others on this highly interactive course.

Consequently, students enrolling on the BPTC must have good analytical and critical reasoning skills and also be fluent in English, conversant with the rules of grammar and able to express themselves clearly and accurately both when they speak and when they write. The existing entry requirements have not been able to achieve this. In addition, the imposition of a language test either selectively or universally has proved problematic since it could be viewed as either discriminatory (if required of certain candidates) or disproportionate (if required of all applicants). In addition, language testing does not cover the important analytical and critical reasoning skills that are also necessary. This is why the recommendation of the Working Group was to develop an Aptitude Test that would be the same for all applicants.

Proposed Changes

It is therefore proposed that, to avoid discrimination and aim to be fair to everyone, all applicants must take the Bar Course Aptitude Test (BCAT) and demonstrate that they have achieved the required minimum threshold. This will be fair, because everyone has to do it in the same way. The proposed provider of the BCAT, Pearson Vue, has systems in place to cater for disabled students requiring reasonable adjustments. Throughout the pilots, detailed studies and comparisons were made according to gender, primary language, age, ethnic origin and disability.

The test is not aimed (as are other tests, eg LNAT) at selecting the best candidates from a large pool of applicants, but as a means of identifying those unsuitable to do the course, at a threshold level, and whose presence on the course adversely impacts on the learning experience of other students.

Conclusions

This policy is designed to ensure that the outcomes of the course are met and that weak students do not dilute the learning experience of others. As a universal requirement it will eliminate the possibility of discrimination, promote equality and the fostering of good relations between diverse groups. There has been a conscious and deliberate approach to consider the impacts on equality before the decision was made.

NB *For full details, please see the Aptitude Test consultation paper (which includes an earlier version of this Impact Assessment as an Appendix).*

Evidence

What evidence will you use to assess impact on equality?

The main sources of evidence and data used to analyse the need for the Test and the issues related to its implementation were as follows:

- Research carried out by the BVC Review Group 2007-09
- Analysis of student success rates and progression data on the course
- Evidence of poor performance by large numbers of students on the course
- Evidence of student surveys, indicating that some 49% (rising to 68% in one provider) felt that their learning experience had been adversely affected by the presence of weak students on the course.
- Focus groups discussion with a range of stake holders including legal academics, students, managers of the Bar Course, Inns of Court, Circuits, Specialist Bar Associations, Consumer groups, equality & Diversity committees
- Annual student surveys and programme of monitoring visits to Providers of the BPTC (2007-12)
- First pilot of the proposed Test (2009-10), and analysis by independent consultant of findings and results
- Second pilot of the proposed Test (2009-10), and analysis by independent consultant of findings and results
- Additional research into the use of aptitude tests in general
- Formal further consultation on the final proposed model for the Test, Dec 2011 – February 2012

The key findings of the above consultation processes were that there was agreement regarding the adverse impact of weak students on the course, on the better students; that additional requirements were needed since the existing requirement to be in possession of a 2:2 degree was not adequate; that other skills needed testing (including fluency in the English language). There was consensus that a universal aptitude or entry test would be the fairest means of achieving the outcome of maintaining the standard of training on the bar Course. Merely testing the English Language skills of those whose first language is not English was regarded as unsatisfactory due to possibilities of discrimination.

Impact on Equality

Overview:

- People from all groups will be able to access the service. There will be no barriers since the test will be available in over 150 centres in the UK and in 165 countries worldwide. The cost (c £67) is minimal in comparison with the cost of the course and additional living expenses needed to undertake it (which would total over £20-25,000 for the year, depending on the Provider).
- The anticipated impact will be to improve the standards of training on the Bar Course. It is risk-based and proportionate
- There is no evidence of unlawful discrimination in the proposal. The possibility of

indirect discrimination due to the cost of the test is examined below.

- The policy changes that are necessary, to ensure the standards of outcomes on the BCAT in the interests of consumers, will not have a direct impact on any other area within the BSB, other than to further ensure that outcomes of the course are met in the best way possible.

Race

Race

The BCAT is based on the testing of critical reasoning skills and analysis. It will therefore require a very good standard of English Language. There are some links between race and language, although this is not always the case. It might therefore be argued that imposing an aptitude test could disadvantage those candidates with poor skills, particularly those in the English language. Such skills are however vital to do the course, and train for the Bar.

In addition, the requirement could be argued as potentially discriminatory against BME or non UK students because some skills that will be incorporated in the test, specifically English language skills are sometimes related to such backgrounds. However, this matter was thoroughly investigated by the BVC Review Working Group 2007-08. It seems evident that applying the same test for all applicants is the fairest method. The thoroughness of the two major pilots (over two full academic years) has also rigorously examined such concepts.

The final report indicated that no substantial adverse impact was found using a range of low to moderate cut scores for gender, primary, language, age, disability or whether the first degree was from a Russell Group institution. The largest impact was for ethnic groups with students from minority groups being somewhat less successful than the white group overall. However, the results show that some BME categories actually perform better on the Test than on the course, so thus would not be unfairly excluded. In fact, evidence shows that Asian students tend to actually perform less well on the course than their Test scores would predict. This suggests that if there is bias in the test it is against the higher scoring White group rather than the lower scoring Asian group. The Test would actually operate in favour of this group.

In addition, the low cut score will additionally minimize the impact on different ethnic groups.

The change will not have any impact on race equality, as the rule applies to all applicants in exactly the same way.

Gender

The change will not have any impact on gender equality, as the rule applies to all applicants in exactly the same way.

There may be a potential barrier for people who are not familiar with taking on-line tests but no relation to gender has been identified. Practice tests will be available to minimise any possible disadvantages.

In wider studies of Aptitude testing (for example the Dewberry Report)

	<p>some small differences have been found for gender. However, the pilots carried out by the BSB show that no significant differences for gender were found for the BCAT.</p> <p>The policy will not adversely affect carers or those with dependants (women are more likely to have caring responsibilities). The test is available in Test centres throughout the country and it can be taken at a time convenient to the applicant. The format of the Test, questions and language used are carefully screened so as not to reflect gender-stereotyped roles</p>
Disability	<p>Disability Reasonable adjustments will be made for applicants with disabilities. Those with physical or other disabilities (eg dyslexia) are catered for by Pearson Vue in their test centres (see http://www.pearsonvue.com/ Details are provided with regard to individual services).</p> <p>Approximately 6% of students annually disclose that they have a disability although the true figure may be higher. The largest disability group is students with dyslexia. The introduction of the Aptitude Test will therefore need to include the provision of reasonable adjustments to ensure that students who are disabled in anyway are not disadvantaged. Pearson Vue, the appointed BCAT Provider has a clear policy on providing reasonable adjustments to candidates with disabilities.</p> <p>Candidates with a disability or condition which might require special arrangements are asked to discuss the matter with their test centre as soon as possible. Cases are considered individually and students will need to provide medical certification. Test centres may need a period of time to put arrangements into place. Measures would include such adjustments as enhancement in font size for those with visual impairments, extra time for those with difficulties such as dyslexia, wheel chair access and so on.</p>
Age	<p>The change will not have any impact on age equality, as the rule applies to all applicants in exactly the same way. There is no identifiable impact in relation to the age of candidates.</p> <p>There may be a potential barrier for people who are not familiar with taking on-line tests since there is a possibility that this may impact more significantly on older people. Practice tests will be available to minimise any possible disadvantages.</p>
Sexual Orientation	<p>The change will not have any impact on sexual orientation, as the rule applies to all applicants in exactly the same way.</p> <p>There is no identifiable impact on lesbian, gay and bisexual people</p>

Religion/Belief	<p>The change will not have any impact on people with different religions, beliefs or no belief, as the rule applies to all applicants in exactly the same way.</p> <p>The policy will not interfere with religious festivals, prayer times, dress codes or dietary requirements since it can be taken at a time convenient to the applicant.</p>
Gender Reassignment	<p>The change will not have any impact on gender reassignment, as the rule applies to all applicants in exactly the same way.</p> <p>There is no identifiable impact on someone who is proposing to undergo, is undergoing or has undergone a process to change their sex. Although ID is required of those taking the test, this would apply (including privacy of data) in the same way as to other candidates.</p>
Pregnancy/ Maternity	<p>The change will not have any impact on those on pregnancy or maternity leave, as the rule applies to all applicants in exactly the same way and the test can be taken at a time convenient to the applicant.</p>
Marriage and Civil Partnership	<p>The change will not have any impact persons who are married or in a civil partnership because there are no employment issues here.</p>
Other Identified Groups (e.g carers, people from different socio-economic backgrounds, or any other groups likely to experience disadvantage)	<p>There may be some impact in terms of the additional cost of the test but, as pointed out above, this is minimal in relation to the cost of the BPTC as a whole (including fees, living costs and lack of earnings). In fact people from all background, including those from low socio-economic backgrounds, will be advantaged by the BCAT since it can be used as a self assessment tool to evaluate whether they are suitable candidates for the course – which could well save them a great deal of time, money and disappointment.</p>

How does the policy advance equality of opportunity?

The policy advances equality of opportunity by applying the same rule to all applicants and allowing those who may have had a disadvantaged background to be assessed in the same way alongside others. A good score on the BCAT would clearly mitigate against the possibility of other forms of discrimination.

How does the policy promote good relations between different groups?

The policy could be used to promote good relations, tackle prejudice and improve understanding between people with different protected characteristics since all will be subject to the same test in the same way, with equal opportunity to progress to the course itself.

Summary of Analysis

Now you have considered the potential impacts on equality, what action are you taking? (Mark 'X' next to one option and give a reason for your decision)

a. No change to the policy (no impacts identified)	Your analysis demonstrates that the policy is robust and the evidence shows no potential for discrimination. You have taken all appropriate steps to advance equality and foster good relations between groups.	X
b. Continue the policy (impacts identified)	You will continue with the proposal, despite any adverse impacts, provided it is not unlawfully discriminating and is justified.	
c. Adjust the policy and continue	You will take steps to remove barriers, mitigate impacts or better advance equality before continuing with the policy.	
d. Stop and remove the policy	There are adverse effects that are not justified and cannot be mitigated. The policy is unlawfully discriminatory.	

Reason for decision:

In accordance with the analysis above, it is demonstrated that there are no significant adverse effects and the policy should be pursued for the benefit of all concerned.

4. Action Plan for Improvement

Give an outline of the key actions that need taking based on any challenges, gaps and opportunities you have identified. Include here any action to address negative equality impacts or data gaps.

Action Required	Person responsible	Timescale
The BSB will carefully monitor the implementation of the BCAT in order to review its efficacy as a predictor of suitability for the Course. An independent consultant is, and will continue to be, appointed for this purpose.	BSB Head of Education Standards and the Independent Consultant	Summer 2014 (after the first cohort of applicants subject to the Test will have completed the course)
The appropriateness of the cut-score that will minimise the impact on different ethnic groups will continue to be monitored	BSB Head of Education Standards and Education team	From September 2013