

Amendments to the Bar Training Regulations – Entry Requirements for the Bar Professional Training Course

**Rule Change Application Made by the Bar Standards Board
to the Legal Services Board under Schedule 4, Part 3,
Paragraph 20(1) Legal Services Act 2007**

This application is made in accordance with the requirements set out in the Legal Services Board's Rules for Rule Change Applications. The Bar Standards Board wishes to amend the Bar Training Regulations to require all students additionally to have achieved a required minimum score in the Bar Course Aptitude Test, for entry onto the Bar Professional Training Course [BPTC].

Any queries about this application should be made to:

Dr Valerie Shrimplin
Head of Education Standards
Bar Standards Board
289-293 High Holborn
London
WC1V 7HZ

Tel: 0207 611 1444
vshrimplin@barstandardsboard.org.uk

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The proposed alteration

- 1 The Bar Professional Training Course [BPTC] is a course of one academic year's duration course of 120 credits at postgraduate level in accordance with the national Framework for Higher Education Qualifications. In order to ensure that all candidates have the necessary skills as well as academic qualifications that they will need to be a barrister, and that they will have them prior to entry to the BPTC (the point at which training specific to authorised persons commences), the Bar Standards Board (BSB) wishes to modify the entry requirements. Specifically, the BSB wishes to amend regulation 25 of the Bar Training Regulations to require all applicants for the BPTC to attain the minimum required standard as specified by the BSB on the Bar Course Aptitude Test (BCAT). It is proposed that this should be achieved by the addition of 25(c) to the existing BTR 25 as below, shown in bold underline:

25. Before commencing the Vocational Stage, a person must:

(a) have completed (or been exempted under Part VII of these Regulations from) the Academic Stage; and

(b) be a member of an Inn of Court.

(c) have achieved a score of -1.34 or such score as substituted by the BSB from time to time in the Bar Course Aptitude Test (BCAT).

Executive summary

- 2 According to the Legal Services Act 2007 s.21, the regulatory arrangements of an Approved Regulator include its 'qualifications regulations', relating to 'the education and training which persons must receive, or any other requirements which must be met by or in respect of them in order for them to be authorised by the body to carry on an activity which is a reserved legal activity'.
- 3 The skills that will be tested by the Bar Course Aptitude Test (critical and analytical reasoning, for which fluency is also important) are necessary skills for those wishing to practise at the Bar of England and Wales. They are skills that students must have before undertaking the BPTC since the absence of such skills will not only prevent them from being able to benefit fully from the course in a meaningful way, but will also seriously affect the learning experience of others on the course and the quality of the course as a whole. It is vital that candidates for the Bar Course have the necessary academic and critical reasoning skills before entry to the course (ie have completed the Academic Stage, as BTR 25(a) cited above). Possession of the additional skills will be tested by means of a system such as the BCAT. These skills, a necessary prerequisite on entry to such a short course, are not currently tested which has resulted in numbers of unsuitable candidates on the course, a high first time fail rate, and a serious impact on the quality of the course and the learning experience of the more capable students. This situation was amply demonstrated by Lord Neuberger in his Report on Entry to the Bar (2007) who recommended further investigation into the feasibility of an aptitude entry test (paras 182-4). Following the Review of the Bar Vocational Course (2008), the Wood Report recommended the use of an Aptitude Test, fairly applied in the same way to all applicants.
- 4 In order to address the regulatory problem of the outcomes of the course being adversely affected by the admission of students with insufficient skills, the BSB therefore made a thorough investigation of such tests, appointed an independent consultant and ran a number of pilots to test the effectiveness with which such tests could act as an indicator of success. Positive results confirmed the hypothesis that this was the preferred means of testing the suitability of candidates on entry in order to ensure the desired outcomes for the Vocational Stage of training for the Bar of England and Wales – for which the BSB is responsible and in which the LSB is required to 'assist' (LSA 2007, s.4). The proposal is also fully in line with the Regulatory Objectives and Better Regulation Principles (below paras 44-51 and 52 - 56). The BSB therefore submits that this proposal is proportionate, evidenced, focused, risk based and timely. It is fair, valid and reliable – and therefore completely defensible. Full details are provided in the sections that follow.

Powers of the BSB

- 5 The Bar Professional Training Course is the gateway to practice as a barrister. Practice at the Bar demands a high level of critical reasoning skill. Students enrolling on the Bar Course need to have excellent critical, analytical and reasoning skills, so they have a high level of understanding and are able to express themselves clearly and accurately both when they speak and when they write. The aim of the new policy is to ensure that all Bar Course students are proficient in the necessary skills prior to the start of the BPTC so that (1) they can fully benefit from the course in a meaningful way and (2) there will be no adverse effect on the learning experience of others due to the deficiencies of unsuitable students. Every student should benefit from the best learning experience possible.
- 6 S.21 (Regulatory arrangements) of the Legal Services Act 2007 states that “qualification regulations”, in relation to a body, means—
 - (a) any rules or regulations relating to—
 - (i) the education and training which persons must receive, or
 - (ii) any other requirements which must be met by or in respect of them, (in order for them to be authorised by the body to carry on an activity which is a reserved legal activity)....
- 7 The BSB has the powers to regulate not only the education and training that persons must successfully complete in order for them to be authorised, but also to regulate ‘any other requirements which must be met’. The nature and level of the entry requirements for commencement of the Vocational Stage, at which specialised training for persons authorised to practise at the Bar commences, are therefore a regulatory issue under s.21(a).
- 8 The skills that are tested by the Bar Course Aptitude Test are necessary prerequisites for students undertaking the course since these skills are essential to the course before entry, and also at the Bar itself. It is vital that candidates for the Bar Course not only have the necessary academic skills on entry to the course (ie have completed the Academic Stage, as BTR 25(a) cited above) but they are also in possession of the requisite additional skills. These can only be tested by means of a system such as the BCAT. These skills, necessary at the beginning of such a short course, are not currently tested which has resulted in numbers of unsuitable candidates on the course, a high first time fail rate, and a serious impact on the quality of the course and the learning experience of the more capable students.

Nature and effect of existing regulations

- 9 At present, the Bar Training Regulations (cited above para 1) specify the entry requirement for the Vocational Stage of Training as having completed the Academic Stage (and having membership of an Inn of Court). The completion of the Academic Stage in the form of a law degree or a non-law degree plus a law conversion course, clearly apply to academic expertise only (including black letter law) rather than proficiency in the additional skills necessary to study for the professional qualification of the BPTC. Experience has shown that the current entry requirements are inadequate for this purpose, hence the proposal for the additional requirement of the Bar Course Aptitude Test. The BCAT has been specially designed to ensure that only those with appropriate skills, capabilities and ethics would be able to gain entry to and undertake the Vocational Stage.

Difficulties with the existing Policy

- 10 Evidence shows that some form of additional entry requirements are necessary for the BPTC, due to the significant number of students who are unsuitable to take the course and subsequently fail, and whose presence has a serious impact both on the quality of delivery of the course and on the learning experience of the more capable students.
- 11 The existing entry requirements to the Vocational Stage of training for the Bar of England and Wales were considered in detail by the BSB Review of the Bar Vocational Course (2007-08) which was revised and renamed the Bar Professional Training Course [BPTC] from 2010. Building on earlier work by Lord Neuberger and others (Annex A), the BVC Working Group, Chaired by Derek Wood QC, reported in July 2008 (Annex B).
- 12 The Wood Working Group found that the existing entry requirements were insufficient in their present form to maintain the necessary standards on entry for the Bar Course: 'The student body includes graduates who are so far lacking in the qualities needed for successful practice at the Bar, including fluency in spoken and written English, that they would never obtain pupillage, however many pupillages were available.' (Wood Report p. 2, para 6 and see also especially chapters 10, 12 and Annex 5).
- 13 Not only did this mean that unsuitable candidates were being admitted to the course, but the lack of appropriate skills sets in a significant number of students was clearly having an impact on those in possession of appropriate skills, harming their progress and capacity to perform at their best and obtain the highest grades possible. This situation has resulted in a risk that good candidates in classes that are held back by students with insufficient skills may as a result do less well, thereby having less chance to proceed to pupillage and eventual practice. This problem is borne out by statistical evidence of low standards on the course, demonstrated by the very high first time fail rate, and by examples of poor application materials from UK law students and graduates (Annex C). In fact, for the academic years 2003-10 only an average of 64% of BVC students passed all modules on the first attempt:

BPTC Year	2003/04	2004/05	2005/06	2006/07	2007/08	2008/09	2009/10
Applicants	2,570	2,883	2,917	2,870	2,864	2,540	2,657
Enrolments	1,449	1,665	1,745	1,932	1,837	1,749	1,793
Successful at end of course	1,251	1,392	1,480	1,560	1,720	1,330	1,432

- 14 The above table clearly demonstrates that students are admitted who are not capable of passing the course after the one university year of study for which it is designed. This is detailed in the Wood Report on the BVC (para 72, Table 3a – provided at Annex B to this document) and is largely due to candidates having insufficient skills, including language skills, at the point of entry to the course. Further evidence of weak students is available in the form of comments made in recent examiner reports (Annex D) and similar material was appended to the Consultation Document (Annex E) in the form of comments from course providers, panel members, students, External Examiners and others (as in Appendix 1 of the consultation document). Examples are provided of enquiries and

comments from prospective candidates that demonstrate the poor skills of students (actually studying law at UK universities) wishing to apply for the course. Even in summer 2011, after the first year of the new BPTC, one examiner commented that *'there may be a case for students of lower academic ability to attend a "pre" course form of tuition to increase their awareness of the need for absolute precision in the basic elements of drafting and opinion writing.'* (see Annex F, analysis of responses to the Consultation for further examples of comments). It should also be remembered that the costs to Providers of setting up large numbers of multiple resit examinations also have a significant effect on the cost of the course to students as a whole.

- 15 In addition, the course is highly skills-based and interactive, with typically over 70% of the course being delivered by small group practical sessions. These are based on role play in court room scenarios dealing with Examination-in-Chief, Cross Examination, Witness Handling, Negotiations and Conferences with clients by means of case studies based on real life cases. The presence of good students immeasurably heightens the learning experience as practising against strong opponents will enhance performance across the board as in any performance or skilled activity. By contrast, the presence of weak students inevitably slows down the learning processes as lecturers and trainers have to adjust the learning process to explain concepts, facts and ideas to those unable to understand or grasp material so quickly. The issue also sometimes forces up the cost of courses as Providers have to employ actors as clients or witnesses in order to ensure fairness of assessment (eg in witness handling, negotiations etc). Selecting out the weak students for the benefit of others is highly desirable. Whether students who score less well than they anticipated on the Test and decide as a result not to apply to do the BPTC is not a matter for the BSB, although it may have benefit to such students in saving them a considerable amount of time and money for no benefit. The Test cannot be advisory only since those in most need of taking it diagnostically are generally those least likely to take it, due to their own over-ambitious expectations (see Annex C to this document).
- 16 The 'Blue Book' specifies (A3, 3.3 1 – provided at Annex H) that the preponderance of teaching should be delivered by small group sessions ('SGS's'). For example, taking the lecture/SGS split as a good indicator, most Providers have approximately 70% Small Group Sessions and 30% lectures. On the basis of the number of contact hours (SGSs being longer than lectures) the ratio of small sessions can be even higher (80% Small Group Sessions and 20% lectures). Poor student participation in these small classes due to insufficient skills has been shown by documented observations, by examiners and by monitoring panels (eg Annex D) to diminish immensely the quality of the learning experience for the class as a whole, as well as for individual students. There continues to be consistent criticism from the profession, providers and students, of the aptitude and skills levels of a significant number of students on the course. That criticism is not directed solely at any individual category of students (eg international students with language difficulties) but at the whole range of students, from varied backgrounds. The comments by Providers, other students, panel visitors and external examiners (mentioned in the Wood Report, passim) are relevant here. Recent comments in the annual student perception surveys carried out in 2010 and 2011 clearly show that the problem continues (see Annex I).
- 17 The Wood Working Group also reported on the results of a student questionnaire which the Group had commissioned (Wood Report, Annex 5). A good response was obtained from over 500 current and recent BVC students in 2008. They were asked for their views on the course, across all Providers and there was a good mix of gender, academic and ethnic background amongst respondents. Students were asked about their views on a range of subjects including curriculum, teaching, assessments, resources etc, as well as their overall experience. Significantly for the proposal to implement an aptitude test

requirement for all students, was the fact that the results showed that 49% of students considered that the presence of weak students had affected their experience (rising to 68% in one Provider). Qualitative comments made by students relating to this issue confirmed that this frequently referred specifically to English language skills, see Wood Report Annex 5 and Consultation document Appendix 1, for student comments, and Annex D for examples of poor student work).

- 18 In addition, whilst conducting this review the Working Party had over 80 meetings with students and teachers on the Bar Vocational Course, with the Specialist Bar Associations, Pupil Supervisors and the Inns and Circuits, and similar comments were made concerning the difficulties that many students face with understanding and language. (See Appendix 1 to the consultation document for a compilation of comments from BSB visits, subcommittee meetings, Providers etc).
- 19 The evidence provided above clearly demonstrates that there is a major problem with the quality of the course caused by lack of regulation of entry (the point at which training specific to authorised persons commences). This is why still more reliable entry requirements need to be determined and adhered to. There is a need for the Regulator to set and monitor a specific entry requirement related to skills in order to ensure that the intended outcomes of the course are met. This is an essential regulatory activity. It cannot be left to the Providers to consider entry requirements and determine what is needed for students given that it is in their interests to fill as many spaces as possible. A system that is regulated must ensure fairness and continuity for all students, as well as suitably high standards of teaching and learning. Practice tests will be available to minimise any possible disadvantages (see Annex E2).

Possible alternatives

- 20 During the Wood Review and since that time, other measures were given due consideration, such as the imposition of a 2:1 entry requirement, as is common for many postgraduate courses. This was also considered, and strongly recommended, by Lord Neuberger's Report (2007, Annex A). However, as explained in the Wood Report (para. 76ff), since degree classifications are a measure of academic achievement in law rather than of the necessary skills, for various reasons the imposition of a 2:1 was thought not to be appropriate. More recently, statistics showed that the percentage of students with firsts who fail the Bar Course was identical to the number of students with 2:2s attaining a grade of outstanding.
- 21 It was hoped that reinforcing the English language requirement (for those whose first language is not English) would assist with the resolution of the issues associated with high failure rates and the problems of students with weak language skills (especially where they impact on the experience of others). However, it has proved difficult to impose a requirement on those whose first language is not English for a variety of reasons. It has been claimed that this approach is discriminatory against certain categories of students, including overseas students and those from ethnic minorities (either at home or overseas). Any attempt to treat EU applicants differently if their first language is not English may be contrary to EU legislation on mobility because of the links with nationality¹. An alternative proposal, to require all candidates to undergo English

¹ Letter to the BSB from the European Commission 15 April 2009. 'Freedom of movement for citizens and equal access to education and vocational training in other member states are among the fundamental principles of Community Law. Under Article 12(1) of the European Community Treaty, discrimination on the grounds of nationality is prohibited.'

language testing (considered in 2010-11), was criticised as being disproportionate. In any case, the problems are not simply confined to language.

- 22 The vast majority of UK universities specify an IELTS requirement for both undergraduate and postgraduate degrees. The entry requirements and exit standards of the Qualifying Law Degree (QLD) and Common Professional Examination (CPE) are subject to such rules but, as demonstrated by the evidence provided (such as the very high first time failure rates), not all those meeting the current entry requirements are of a suitable standard to complete the course and progress to pupillage and eventual practice (provision of reserved legal activities).

Development of the BCAT

- 23 After due consideration of the regulatory problem of the outcomes of the course being adversely affected by the admission of students with insufficient skills, and the possible solutions for this, the introduction of an Aptitude Test was thus subsequently recommended (Wood para. 9) and has since been carefully developed. The proposal for a universal test is proportionate and targeted since it will only eliminate those who would fail the course, taking care not to exclude any candidates with a reasonable chance of success (see Wood paras 74 and 75 and Annex 5). It is appropriate at entry to the Bar Course - the point at which specialist training for the Bar begins, the ultimate aim of which is the effective delivery of legal services – because the admission of unsuitable candidates will have an adverse effect on the learning experience of others on the course. The pass threshold for the Test will be extremely carefully monitored and adjusted as necessary in future. It would not be appropriate at this point to commence with a higher threshold or ‘cut score’, until thorough monitoring and review has taken place, which the BSB undertakes to do.
- 24 There is a risk that, if an additional entry requirement is not introduced and monitored by the BSB, individual BPTC Providers will use other selection criteria (in addition to the formal entry requirements) wherever there are more applicants than places. Some Providers already do this and the BSB has no control over additional testing used. This could potentially lead to unfair recruitment processes, whereas the BCAT is to be carefully managed, controlled and monitored by the BSB.
- 25 Much discussion took place on the ‘cut score’ at which the minimum threshold of attainment on the test should be set. This is explored in detail in the Report on the Consultation (Appendix A). In summary, the analysis in the reports suggested cut scores in the range of -1.34 to -1 which would provide a balance between effectively reducing the number of students admitted who go on to fail the course and excluding students who would go on to be successful on the course. While any cut score in this range would be appropriate the recommendation is to set the cut score at the lower end initially. There are a number of reasons for this recommendation:
- It minimises the possibility of any potential adverse impact on candidates who might be successful on the course even though scoring lower on the BCAT.
 - It minimises adverse impact against where there are differences in performance between demographic groups
 - Bearing in mind that the current analysis of necessity is based on results for students who were not taking the test for operational reasons, a more conservative approach is desirable pending operational experience with the test.
 - Following implementation and further analysis the cut score could be raised if the results supported it.

The table below shows the correspondence of scores from the scale used in the reports to the new score scale.

Original scale	Minimum passing score	% Passing with this cut score in student sample
-3		
-2.5		
-2		
-1.5		97%
-1.34	37	90%
-1.25	38	84%
-1	40	79%
-0.5		72%
0		
0.5		
1		
1.5		
2		
2.5		
3		

A cut score of -1.34 (ie score of 37) would therefore identify the bottom 10%, that is, those who without the necessary skills are at significant risk of failure and would also have the greatest adverse effect on the learning experience of others.

Nature and effect of the proposed alteration

26 The Bar Standards Board proposes that the Bar Training Regulations be amended so that regulation 25 reads:

25. Before commencing the Vocational Stage, a person must:

(a) have completed (or been exempted under Part VII of these Regulations from) the Academic Stage; and

(b) be a member of an Inn of Court.

(c) have achieved a score of -1.34 or such score as substituted by the BSB from time to time in the Bar Course Aptitude Test (BCAT).

The BPTC is the entry point or gateway to practice as a barrister, a profession that requires high level critical reasoning and understanding. As indicated in the examples provided with the Consultation document (Annex E2) the BCAT effectively tests these areas as well as, more specifically, related areas such as inference, recognition and assumption, deduction, interpretation and evaluation of arguments. Students enrolling on the Bar Course must be able to express themselves clearly and accurately both when they speak and when they write. The aim of the new policy is to ensure that all Bar Course students have fluent understanding and proficiency in the necessary skills.

27 The BSB has, as demonstrated, the capability and capacity to develop and test the proposed Aptitude Test. Since the operation of the BCAT will be outsourced to a

commercial Provider, the BSB also has the capacity to put the BCAT in place, and monitor and review its progress over time. The number of full time staff currently dedicated to management of the BPTC is 3 full time permanent staff (Manager, Officer and administrator) plus one temporary assistant and approximately 0.25 of the Head of Education. The head and manager have, between them, over 40 years' specialist experience in higher education and professional standards.

Possible adverse effect

- 28 The rule change (to require all applicants to demonstrate the current minimum in the BCAT) may have an effect on overseas and ethnic minority candidates, since this group may include significant numbers who are less fluent in the English language, skills that are needed for understanding, interpretation and evaluation. However the BSB believes that this impact is justified since the introduction of the BCAT is a proportionate method of ensuring that those participating in the BPTC have the necessary level of critical reasoning to engage successfully with the course. This goal is justifiable under the BSB's regulatory responsibilities (as stated above, paras 5-7) and the requirement will apply equally to all applicants and an Equality Impact Assessment was fully carried out at various stages (final version attached as Annex G).
- 29 The BSB thus believes there is clear justification for a requirement that all applicants demonstrate their proficiency in the BCAT. Since lack of skills has been proven to have an adverse impact on students' own experience of the Course and that of their fellow students, it is considered that any adverse impact is proportionate to the magnitude of the problem and a necessary consequence of overcoming it.
- 30 It could be argued that there will be no additional effect on overseas students resulting from the proposed rule change, since those whose first language is not English are at present required to be able to demonstrate 7.5 IELTS anyway. Currently, Providers can require any student with a low level of English language to take IELTS regardless of their first language and require them to withdraw if they do not pass. It is preferable for students to know this prior to entry than to suffer the distress (and expense) of being asked to withdraw. This applies to home and EU students as well as those from overseas. We would expect that the students who may find themselves in this situation would be the ones who would be identified by failing IELTS. They would not therefore have been able to start the Bar Course in any case. The study found a small but significant difference in BCAT scores with those with English as a second language performing marginally less well on the Test. There was a much larger difference in relative performance on the course with those with English as a second language performing much less well at examination. The importance of critical reasoning skills is the focus, rather than primary language issues. These are separate issues but poor written work may result from a lack in either area.
- 31 The application of the proposed BCAT requirement to all applicants for the BPTC will also apply to disabled applicants. In order to ensure that disabled students are not disadvantaged by the application of this requirement, it is important that reasonable adjustments can be made. This is particularly the case where prospective students have impairments related to the use of language e.g. dyslexia or very severe speech impediments. The BSB has therefore taken steps to verify that the administrators of the Test (Pearson Vue) will ensure that reasonable adjustments are put in place for those taking the BCAT. The BSB has been assured that Pearson Vue has the capabilities to make reasonable adjustments for candidates with disabilities. This will be as defined in the final contract.

- 32 There is, of course, a cost implication for the requirement for all applicants to the BPTC, which may cause some adverse impact to those who cannot afford the cost. Judging from the fact that the current fees for the course range from £16,885 (BPP London) to the least expensive which is £11,980 (Cardiff), the cost of the BCAT at c. £67 is a small sum in relation to the cost of even the very cheapest course. The cost of undertaking the course is naturally compounded by the need to meet travel and living expenses etc as well. The Bar Standards Board considers that an increase in costs by this relatively small amount is justified by the necessity for the requirement demonstrated above, and the positive effects on the courses (and hence on the profession) that are likely to result. In addition, students who are not able to achieve the required standard for the BCAT will become aware at an early stage in the application process that they do not have the necessary skills which will be taken diagnostically as an indication that they might be better advised not to undertake the course.
- 33 A technical cost benefit analysis of the implementation of the BCAT has not been carried out, nor was this deemed necessary by either the LSB or the BSB since this is not specifically a regulatory matter. However, a scoping exercise on the implications was completed (as in paragraph 22 above) and various impacts identified. As indicated, for example in materials on 'Cost-benefit analysis in Educational Planning' (2004) by Maureen Woodhall (UNESCO, International Institute for Educational Planning 2004, <http://unesdoc.unesco.org/images/0013/001390/139042e.pdf>), the rate of return in education and corresponding cost-effectiveness relates to the fact that the longer students take to pass, the longer they are unable to earn to their full potential and benefit from the costs they have inputted into the course. Costs to the student either failing the course or being delayed in finally passing the course are considerable. As mentioned above, fees and living expenses for the course are substantial, especially coming on top of increased fees for undergraduate courses from 2012. Costs are compounded for overseas students, due to additional exchange rates, travel and other expenses.
- 34 For institutions, additional costs incurred for dealing with weak students are also considerable, for example the costs of setting up resit examinations, which are increased if undertaken overseas (due to costs of using British Council venues, invigilators, administration costs, couriers for scripts etc). Other factors, such as overuse of Student Services, study skills support, counselling services, library support, language support, personal tutors will also result, not to mention additional work and hence costs for academics in managing the necessary extra tuition, group work and support for students who are below the necessary competence threshold. By contrast, since staff:student ratios are set for the BPTC (1:12.5) reduced student numbers will require fewer staff and could even maximize profits.
- 35 For strong candidates, the cost benefits will be significant, driving up quality on the course, enabling them to heighten their skills and ensuring fitness for purpose and value for money on the course in which they have invested. As has been demonstrated, the presence of weak students significantly impacts on other students in lectures, seminars, assessments and group work. By acting as a further check and excluding those without the minimum prerequisite skills, the Test will aid those capable students who may have been overlooked when entry requirements are simply based on academic prowess and not the reasoning skills required for advocacy and the Bar. Places are limited at each BPTC Provider (according to resources available) so the Test will ensure that competent students will take the place of students who may undeservedly have been accepted on the course in the past. The facility to take the Test at an early stage in their academic career is likely to help potential lawyers decide whether or not this should be their chosen career. BCAT will at least guarantee the minimum level of competence on the course

- which will act to assure, maintain and enhance quality. This is clearly a matter for the regulator.
- 36 Finally, for weaker students, those who struggle to pass will incur further costs during repeats, mainly in terms of the need for further loans and interest payments, delay in paid work, travel and, most of all, the risk of risk possibly wasting very large sums of money in their entirety. The above should all be considered against the minimal cost of the BCAT (c £67) which can assess the minimum competence skills required to 'hit the ground running' on this very short but very intensive course. Unlike a three year undergraduate course where skills can be built up over a number of years, students lacking in such skills or accustomed only to 'learning by rote' will not be able to keep up.
- 37 It is not expected that indirect costs will feature significantly since for example the need or wish to pay for extra training is unlikely to materialise. Although based on the Watson-Glaser approach (for which practice tests are available free online on the internet), the BCAT is tailor-made for its purpose. Questions will not be released, nor will correct answers be made known. The possibility of a student remembering questions is remote and, even if multiple attempts bring about improvement in performance, then that improvement would be likely to make them appropriate candidates for the course.
- 38 The concept that the impact of the BCAT may well result in reduced student numbers, which would reduce fees for the Providers of the course is not a matter for the Regulator. The first priority must be to ensure that suitable candidates undertake training of the highest possible quality. Although not a regulatory issue, a likely 'by-product' would be that those who are not suitable for progression do not waste their time and money (fees, living expenses and lack of earnings that could easily amount to approaching £40,000 for the year).
- 39 The impact of the Test on social mobility and diversity was carefully considered and monitored from the outset. Featuring strongly in the Neuberger and Wood Reports, a prime aim of the approach was to set an entry test that would be taken by all applicants, regardless of background, with the result that a 'level playing field' would be created where opportunities were completely fairly presented. An Equality Impact Assessment was drawn up in 2009 relating to the proposal to strengthen the existing entry requirements for applicants, by means of an Aptitude Test. Extensive consideration was given to possible alternatives, as mentioned above, for example whether a minimum 2:1 entry standard should be required. This was rejected by the Wood Group (and consequently by the BSB) since academic skills are not always an indication of the necessary skills to become an advocate. Also, the variation in standards between degrees and degree classifications (both within the UK, let alone in comparison with overseas gradings), means it would be difficult and unfair to some candidates to have a 2:1 cut off point.
- 40 Further Equality Impact Assessments have been carried out since 2009 as the BCAT has been developed and piloted. The latest version, updated since the consultation, is attached at Annex G. These have enabled the BSB fully to consider the equality implications for different protected characteristics associated with the changes and, where possible, mitigate any possible impact. The BSB will monitor any such impacts of the test by analysis of data relating to applicants and successful candidates, as has been carried out for some time through the online application system (BPTC Online) where such data is captured. This will be carried out in an open and transparent way with annual publication of data relating to both BPTC students and pupils on the BSB website, as already occurs.

Why we wish to make the alterations

- 41 The BSB is the regulator of professional standards for training for the Bar of England and Wales (BPTC) which includes entry to training. As already emphasised above, the Bar Professional Training Course is the gateway to practice as a barrister. Practice at the Bar demands a high level of critical reasoning, which underlies the ability to present an argument orally or in writing. Students enrolling on the Bar Course are also expected to have excellent language skills and understanding, so they are able to express themselves clearly and accurately. The aim of this policy is to ensure that all Bar Course students are proficient in the necessary skills.
- 42 As quality assurers of the Bar Professional Training Course, the BSB is concerned to ensure that students are gaining a valuable experience on the course, and that the students exiting the Course are of a high enough standard to begin a pupillage at the Bar of England and Wales, should they wish to do so. By raising entry standards to the Course the BSB will be doing more to ensure that the experience of students likely to progress to careers at the Bar or in the provision of legal services are not affected by a lack of skills in others. Although not specifically a regulatory issue, a side effect or benefit is likely to be that individual students who do not have the requisite skills for the Course are not recklessly permitted to attend the Course and pay the large fees and expenses associated with it, but for no return. The Bar Standards Board takes its obligations to ensure equality of entry to the Bar Course (BPTC) very seriously. Those being called to the Bar of England and Wales clearly have to have a certain level of skills and aptitude, in addition to a minimum 2:2 academic attainment, in order to ensure fulfilment of the regulatory objective of promoting competition in the provision of services. Having no other additional test or requirement is not an option given the need to protect the public interest in the provision of high quality training, and the strong evidence that, without this, students would be admitted to the course who were not capable of fully benefitting from the course and, perhaps more importantly, would adversely affect the quality of education of others.
- 43 It should be emphasised that students who do not pass the BCAT first time are not prevented from re-taking the test once they have improved their skills, and they can then apply again for admission to the BTPC. This number of resit opportunities that should be made available was much discussed during the consultation and a significant proportion of respondents at all stages were in favour of limiting the number of attempts. However, the BSB accepted the recommendation of the Education & Training Committee that, in order to ensure fairness of opportunity and access, there should be no limit to the number of resits, although an interval of 3 months should take place. Although there is a small risk that candidates might become used to the questions, or even encounter the same questions from the bank if they had repeated attempts, they would not be able to takeaway question papers and would not be told the right answers. If they were able to improve their reasoning and language skills and subsequently pass, there was no reason why this should not be acceptable. To exclude a candidate for the remainder of their career, however it developed, is not reasonable. The BSB intends to keep the rate of resits under review, together with the evolving success rate of the re-sitters and of course any possibility of abuse of the policy. The number of resits might be reconsidered in the future if evidence shows that some limitation is appropriate but at present it is considered unreasonable permanently to exclude for their entire career a candidate who had failed say 3 times.
- 44 Alternatives to an aptitude test entry requirement have been considered over time. The application of the current regime with its focus on English Language skills has proved not to be acceptable. It was difficult to define what is the 'first language' of some candidates

and, as already identified above, the problems encountered with weak language skills extend across the student body and not just to those for whom it is possible to say that English is not their first language. There have been instances of reports that students have falsely stated that English is their first language in order to start a Course. Applying the requirement to all students would remove the burden from the BPTC Providers to police language levels which has proved difficult to do effectively but this has been considered to be disproportionate and unfair on those with 100% fluency in English. Further, there have been instances when students have been required to undertake IELTS part way through the Course due to poor language skills but, although they have failed to achieve the requisite score, they have not been removed from the Course due to the lapse of time or a failing in the admissions process meaning that they cannot be legitimately removed. As has been noted above, concerns were also raised, for example by the European Commission, that the current regime may be discriminatory. The Bar Standards Board considers that the implementation of an Aptitude Test, the same for all candidates, is therefore the most necessary, fairest, and non discriminatory way of ensuring that only candidates with adequate skills are admitted to the course, in the interests of themselves, other candidates and hence the public and consumers. See EIA attached at Annex G.

The regulatory objectives

[already stated in the Consultation document but included here as well, for convenience]

45 Protecting and promoting the public interest

The number of undergraduate, postgraduate and training places in law, and the number of employment opportunities, are demand driven. Individuals should be free to pursue a career in law but with the knowledge that it is a highly competitive area with limited places available in firms, chambers, employed practice and government. Provider test control is thus clearly inappropriate. Candidates should therefore be made aware of the high standards of training for the Bar of England and Wales and steps are also necessary to ensure that only suitable candidates undertake training.

The need for candidates to possess adequate skills on entry to training is clear, due in particular to the interactive and intensive nature of training on the course. The possession of not only academic knowledge, but also appropriate critical reasoning, use of language and other skills, is fundamental to the concept of providing high quality legal services in the public interest. Study of the BPTC demands a high level of ability in such a condensed learning period and the public interest in there being high quality training is best met using a specified entry requirement, applied fairly and reliably to all applicants. Moreover, it is in the public interest that the learning experience at Bar School should be of the highest quality and not adversely affected by weaker students during small group sessions, group discussions, summative assessments or while working as pairs in advocacy skills sessions.

Although the existing entry requirements (a Qualifying Law Degree or a Qualifying Degree followed by successful completion of a Conversion Course (BTR 18) awarded at first or second class honours), go a long way to ensuring a minimum entry level, the standards of degrees are not always easy to assess and vary considerably between institutions both at home and overseas. It is thus essential for an additional measure to be put in place which is fair to all candidates. While it is true that some students do eventually practise in overseas jurisdictions, the training is for the Bar of England and Wales and all must reach the necessary standard for this. It is no longer the case that a degree from a UK university will always be set at the required standard for entry to

professional postgraduate legal training. In addition, a degree will test academic proficiency rather than aptitude or skills.

46 Supporting the constitutional principles of the Rule of Law

Implementation of robust requirements for entry to the Bar Course can only serve to help uphold the principles of the Rule of Law, in helping to ensure the quality of the training courses and the standards attained by barristers. Use of the Test will ultimately help ensure that barristers will have the necessary skills of critical and analytical reasoning, which will in turn ensure the Rule of Law is upheld. The use of the BCAT will support the Rule of Law because that depends on barristers having critical reasoning skills and the ability to understand what is at stake and present it to the court and continue the tradition of objective application of the Law to all involved. This needs to be tested first by the BCAT prior to entry (for reasons given above) and further instilled by the course itself.

47 Improving access to justice

The Bar Standards Board considers that a requirement for all candidates to take the BCAT is likely to have an impact (albeit limited) on the objective of improving access of the public to justice. The proposed regime will promote improvement of access to justice by helping to ensure that the students who exit the Bar Professional Training Course have experienced the highest standard of training and themselves are of a requisite standard. Maintaining high standards on the Bar Course will inevitably feed through into the Bar, resulting in many talented and capable Barristers available to represent the public.

48 Protecting and promoting the interests of consumers

In order to protect and promote the interests of those who use the services of the Bar, action must be taken to ensure that consumers can make informed choices about quality, access and value. It is thus essential that training is of the highest quality, with good quality candidates. Consumers will be protected if education and training is of high quality from beginning to end. Ensuring students have the skills necessary for meaningful participation in the BPTC must be considered, as well as the end results (ie passing the course). It is unrealistic to suggest that outputs alone can ensure the quality of practitioners, due to the interactive nature of the course and the effect on quality of training with the 'wasted' experience for both staff and students of having 'carried' weak students, which is counter-productive. Training and the student experience must be of the highest level in order to ensure the highest level of outputs. Consumers feel more comfortable employing a service when they are assured of the high standards of training. This links in turn to the QASA scheme. Just as assessment of advocacy is now needed for advocates in order to assure consumers and judges of quality, so the same is true of the aptitude test, which is simply an earlier stage in the same process and one which can be monitored. Its success ought to ensure growing success in QASA and fewer failures in advocacy assessment.

With regard to students as consumers, the cost of the course is so high now and will only continue to rise in the future so that it would be wholly inappropriate and irresponsible for the regulators to allow students who are unlikely to pass the course to embark on it and damage the learning experience of fellow students, possibly causing some of those not to do as well as they might and stifling their progression.

49 **Promoting competition in the provision of services**

As has been addressed several times throughout this submission, adding an entry requirement in the form of an entry Aptitude Test will increase public confidence in the standards at the Bar. In turn, this can only help to promote competition between highly trained practitioners.

Insofar as competition between Providers is relevant, there is nothing in the Test that would prevent or adversely affect competition between BPTC Providers for the best students. The provision of a higher quality learning environment and a test which accurately identifies a candidate's prospect of success may even increase the number of applications from strong candidates and thus competition. Providers will be kept informed of the profile of applicants (anonymously) to their own and other courses. Students will be informed of their actual mark (although only a pass is required) but Providers will not, initially be informed of applicants' scores, so as to avoid the formation of league tables and to prevent Providers discriminating at the top end, which is, as the research shows, less reliable.

50 **Encouraging an independent, strong, diverse and effective legal profession**

The Bar Standards Board does not consider that using an Aptitude Entry Test could have any adverse effect, on the independence of the legal profession. The independence and strength of the profession would be undermined if the Bar was not in a position to assure the public that the entrants are sufficiently able, that the training is of very high quality and that only those students who have the capability for this intense phase on the continuum of training for the Bar go through to study on the course. Entry Aptitude tests are now prevalent for entry into many professions and have been much discussed, for example by Dewberry; they do vary considerably in type, however. In the UK, the National Admissions Test for Law, for example (LNAT) is used at the entry point to undergraduate law programmes, and 'designed to help universities make fairer choices' (<http://www.lnat.ac.uk/>). In the USA and Canada (and for some Australian programmes) the Law School Admission Test (LSAT) is administered in centres throughout the world, by the Law School Admission Council (LSAC: www.lsac.org), for prospective law school candidates. The LSAT is designed to assess reading comprehension, logical, and verbal reasoning proficiencies. In other disciplines too, Aptitude testing is becoming more and more usual. The BioMedical Admissions Test (BMAT) is a subject-specific admissions test taken by applicants to certain medicine, veterinary medicine and related courses, whilst the UK Clinical Aptitude Test (UKCAT) is used in the selection process by a consortium of UK university Medical and Dental Schools (<http://www.ukcat.ac.uk/>). The English language admissions test (ELAT) is an admissions test for applicants to undergraduate courses in English at certain universities, with particular emphasis on language skills, crucial also for the Bar. Most of these are used more selectively to identify the strongest candidates out of a large pool. By contrast, the BCAT aims to eliminate weak candidates with no chance of success. It therefore does not impose any unnecessary or unreasonable barriers to progression. In fact, rather than causing barriers to those unsuited to the profession, the BCAT removes barriers to learning for those able candidates who have invested a great deal of time, money and effort in the BPTC, but are held back by others with inappropriate skills sets.

Aptitude tests are not only used for competitive academic programmes. There is an aptitude test for the Police force (<http://www.personality-and-aptitude-career-tests.com/police-aptitude-test.html>) and for many commercial organisations at all levels – for example, easyjet cabin crew, where relevant fluency in language is also required

(<http://www.easyjetcareers.com/careers-in-the-air/cabin-crew-careers/recruitment-process.aspx>). Applying the same test to all applicants for a particular programme or career is clearly widely seen as the fairest approach.

At the professional level of training, measures are similarly in place. There is widespread acknowledgement that necessary skills should be tested, for example, for incoming foreign medical practitioners for example, even from the EU, such as the GMC's Professional Linguistic Assessment Board (PLAB: <http://www.gmc-uk.org/doctors/plab.asp>). The PLAB test is the main route by which International Medical Graduates demonstrate that they have the necessary skills and knowledge to practise medicine in the UK. It is not only a language test but tests necessary skills relevant to the profession (as is the aim for the BCAT). The Watson Glaser Aptitude Test (on which the BCAT is based, appropriately tailored for training for the Bar) and similar psychometric tests are widely used in UK business and have been subject to thorough testing and review over the years (<http://www.psychometrics.cam.ac.uk/page/196/critical-thinking.htm>). The Judicial Appointments Commission sets written qualifying tests for candidates for judicial appointments (<http://jac.judiciary.gov.uk/selection-process/19.htm>).

It is significant that considerable reference was made in the Milburn Report (2009) to aptitude and the use of aptitude testing in university admissions (for example, pp. 7, 44, 48). 'Successful professional careers,' it was stated, 'rely increasingly on aptitude as well as ability' and some universities are already using alternative aptitude testing' (p.93). It was emphasised in the conclusions (p. 112) that opportunities 'should be open to all who have aptitude.'

The BSB is committed to promoting diversity in the profession so that those with the appropriate abilities are able to make a career as a barrister irrespective of their background, race, religion, gender, sexual orientation, disability or age. This means that all candidates must be treated fairly, in the same way, as they apply for the BPTC. The application of the BCAT for all candidates will not involve any additional implications for those with disabilities. Reasonable adjustments are made by the provider (Pearson Vue) at all their test centres, as appropriate.

The concept of an open and fair system, applicable in the same way to all, underlies Recommendation 9 of the Wood Report to introduce an Aptitude Test for all for admission to the Bar Course. The pilots have shown that no particular category of candidate is disadvantaged, leading to inappropriate exclusion from the course. The threshold will be set at a reasonable level, as indicated by the analysis as appropriate in relation to the intended aims. This is not a test designed to select the best out of a large pool (as other tests cited above) but much more conservatively in order to ensure that those unlikely to pass are not admitted to the many places available on 9 courses (at 11 locations) in England and Wales. The poor standard of some UK and overseas law students is amply demonstrated by the examples in Annex C. The lack of requisite skills to progress to postgraduate training is clear, often connected also to lack of fluency in the English language, and not only for those whose first language is not English.

Similarly, it has been demonstrated that introducing the Aptitude test will not have a significant adverse effect on diversity at the Bar. At the cut score proposed, the lowest 10% will be removed so any effect will be minimal but sufficient to remove those who would not succeed and thus have an impact on the quality of the course. All the evidence suggests that there is no difference in the capacity of the test to identify those likely to fail the course across demographic groups.

In fact, on the second pilot, there were high and low scorers within each identified ethnic group, and many ethnic minority students performed better on the Test than on the course. Instances of candidates performing poorly on the Aptitude test but doing well on the course were rare and included all categories. Evidence (in the form of time spent on the exercises) suggests that some candidates did not take the pilot seriously and did not apply themselves to the exercise. The evidence in terms of time spent shows that some candidates did not take the test seriously (eg in some cases but not specifically all those who did well on the course but badly on BCAT. This was true of the worst BCAT score associated with a good course outcome. Time was the only available indicator of 'taking the test seriously' but some candidates may have responded more slowly but not tried to gain the highest score they could as they would be likely to do if taking the test as an entrance requirement. The percentage of applicants unable to meet the requirement will be low and those individuals affected can take the test again once they have improved their skills.

As discussed above, raising entry requirements for the Bar Professional Training Course will doubtless raise the standards on the course as well as the students graduating from the Course. This is likely to increase the strength and effectiveness of the legal profession.

51 Increasing public understanding of the citizen's legal rights and duties

The Bar Standards Board considers that requiring all BPTC applicants to take the Aptitude Test would have no effect, adverse or otherwise, on the public understanding of this regulatory objective. It would rather increase public understanding of entry requirements for training and provide additional reassurance.

52 Promoting and maintaining adherence to the professional principles, including maintaining proper standards of work; and acting in the best interests of clients

Promoting excellence and quality within the profession is a vital role of the BSB, as is ensuring that those who qualify as barristers have the right level of skills and knowledge to provide services to the public. This concept underlies the BSB's role in regulating education and training for the Bar and ensuring a good quality educational experience which will inevitably lead to well qualified Barristers entering the profession. The requisite aptitude and skills are fundamental in ensuring the proper standards of work of those who are called to the Bar of England and Wales.

The Better Regulation Principles

53 Transparency

The Bar Standards Board has worked hard to maintain transparency throughout the entire review and consultation. A great deal of consultation and discussion has taken place to date, centred on the major review of the Course, before the BSB reached the conclusion that a universal testing system (for language, reasoning and aptitude skills) was the best way forward. Barristers, academic staff and the students themselves were all consulted and there was wide support for a stricter entry requirement to raise standards on the Course.

Consultation with other Approved Regulators on the requirement for all candidates to reach a specific minimum threshold on the Aptitude test will continue during the process of seeking formal approval from the LSB.

54 **Accountability**

As the regulator for the Bar, the Bar Standards Board is accountable for the changes it implements. The Board has a wide range of plans to ensure that it remains accountable for the decision that it has taken to introduce a mandatory Aptitude Test. These include:

- a. A programme of monitoring visits to all BPTC Providers where consideration will be given to effects the changes have had when talking to students, staff and management. Issues identified will be addressed as necessary.
- b. The BSB employs External Examiners (who are independent and appropriately skilled) to assist with Quality Assurance by means of visits to individual Providers and attending examination boards. All External Examiners will be briefed to ensure that they particularly address the issue of any changes which have occurred due to the raising of the entry requirements, and ensure that they include any observations in their report for consideration by the Bar Standards Board.
- c. The Bar Standards Board conducted a Student Perception of Course Survey in 2008, 2010 and 2011. There is currently a question on the survey seeking student views on whether they felt their experience was affected by the presence of weak students on the Course. This is monitored.

In addition, and as result of the new proposal, the BSB will ensure that results of the BCAT will be analysed annually to monitor whether performance and student satisfaction improves on the course. Working with Pearson Vue, full statistics on all aspects of candidates taking the course will be analysed, including ethnicity and diversity monitoring, background, qualifications, location, bookings, number of attempts and success rates (to be compared with acceptance and performance on the course). Monitoring will also take place to ensure the veracity of results, for example fake IDs, impersonations etc, through the use of photographic likenesses. Reasonable adjustments and mitigating circumstances are dealt with in detail elsewhere in this document, but these too will be carefully monitored. Candidates will be supplied with their results before leaving the test centre (which are normally open during working hours 5-6 days a week).

- d. The Bar Standards Board will, by way of this report's conclusions, undertake various continual monitoring operations to ensure that the chosen test continues to be fit for purpose and to assess any effect it may have on any particular cohort.

55 **Proportionality**

The BSB carried out a thorough and careful review, with extensive consultation before determining the need for an Aptitude Entry Test for the BPTC. The conclusion reached was that some form of universal entry test was the only suitable way to ensure a fair and proportionate approach to the selection of suitable candidates. This is needed in order to avoid unsuitable candidates affecting the quality of the course overall, and to ensure it functions at a high level educationally. It is vital that minimum standards for entry to the course are set and monitored; particularly given the evidence over the years that self-regulation by Providers, according to the *minimum* entry requirements set by the BSB, has not been sufficient to resolve the problem of an excess of weak candidates on the course. Notwithstanding the expense of the course, the evidence shows that students with insufficient aptitude and skills still seek to do the Course.

56 **Consistency**

The BSB considers that a requirement for all applicants for the BPTC to demonstrate a minimum level of aptitude for the course is by far the best method of ensuring that there is fairness in the selection and admissions process for the Course and that a consistent approach is adopted towards all students. This will also help to remove the possibility of inconsistencies according to Degree institution including those from overseas.

57 **Targeting**

The BSB considers that entry to the Bar Course is the appropriate stage of training at which to target the requirement for many reasons. It must take place prior to entry because the skills tested by the BCAT are those required to participate meaningfully on the course. It would be inappropriate for students to undertake the test after entry or to rely on outputs only, because of the adverse effect on other more capable students. (The expense to students of undertaking a course on which they are predicted to fail is an additional factor but not a regulatory issue) Although the BSB fervently believes in enabling access to training to a wide spectrum of applicants, it is totally inappropriate to suggest that very weak students with little or no prospect of passing the course should be allowed to attempt the BPTC, because of the effect the presence of weak students, particularly during small group discussions and interactive advocacy exercises, is likely to have on the learning experience and performance of the remainder of the students who will progress to legal careers.

The LSB Regulatory Framework

- 58 The publication of the LSB Regulatory Framework (December 2011) means that in addition to the Regulatory Objectives and the Better Regulation Principles, the BCAT must now also be tied firmly to the LSB framework in terms of what is now considered by the LSB to be best regulatory practice for legal services regulation. This must consist of the four now familiar constituent parts: *'An outcomes-driven approach; understanding of the risks to consumers and the ability to profile the regulated community according to the level of risk; supervision of the regulated community at entity and individual level according to the risk presented; and a compliance and enforcement approach that deters and punishes appropriately.'*

The BSB considers that the imposition of the additional entry requirement is risk-based and outcomes focused in terms of the overarching aim to ensure the outcome of training on the Bar Course that is of high quality and fit for purpose. Supervision and monitoring systems will also need further detailed consideration, which the BSB undertakes to pursue.

Desired outcome

- 59 The desired outcome from implementing the BCAT would be the improvement of standards on entry, better quality education and therefore better qualified persons graduating from the BPTC above the minimum threshold. Less time would be spent on assisting weak students, particularly in advocacy classes. By using a test universally we will be able systematically to identify students with poor skills and they will be prevented from undertaking the Course until such time as their skills have improved to the required standard (Wood, para 75).
- 60 The proposed alterations are expected to increase student satisfaction on the BPTC as weak students will not be on the Course to risk affecting other students' experience.

- 61 It is expected that overall marks on the BPTC will be slightly higher than they are now as evidence suggests that students with poor skills invariably do less well on the Course. This will be checked by comparing the scores and statistics some years after the rule change with those from some years previous.
- 62 It is expected that the implementation of this proposed rule change will also assist the Legal Services Board in achieving the Regulatory Objectives due to the reasons outlined earlier in this report.

Other regulators

- 63 The proposed alterations are unlikely to affect the Solicitors Regulation Authority (SRA) and they have not responded directly to our consultation. There is a chance that some students with poor skills will wish to undertake a Legal Practice Course instead of a BPTC following the rule change as the requirement does not exist for the LPC. The Law Society has indicated an interest in the use of Aptitude testing and has explored a similar entry requirement for their own vocational course (LPC). In fact, at a recent LSB seminar (29 March 2012, Leeds) held to promote debate on the LETR, the representative of the Association of Women Solicitors expressed strong support for the development of an Aptitude test for solicitors (*'If the Bar are having an Aptitude Test why can't we?'*). It was stated by the SRA representative that they have considered this but are taking a cautious line, due to suggestions that aptitude testing may be discriminatory, but this is only applicable to the type of testing that selects a small number of top candidates out of a large pool, which is *categorically* not the approach nor type of test on which the BCAT is modeled. At the same event it was also stated, by an LSB representative) that *'high entry standards are needed so that when they [providers of legal services] are unleashed on the public, they are adequate.'* At the Association of Law Teachers Conference (Oxford 1-2 April 2012) serious concern was unanimously expressed about the poor skills (critical reasoning, grammar and language) of many law students, and the impact of this on the future quality of legal professionals, and hence legal services.
- 64 Due to the fact that the introduction of the BCAT for all students on the BPTC is likely to improve the learning experience and standards of those graduating from the course and entering into practice, the SRA and Institute of Legal Executives may well notice a positive effect in that Barristers transferring across professions will have improved skills.
- 65 The Law Society has commented that it might be wiser to await the recommendations and outcomes of the Legal Education & Training Review (LETR). However, the timescale for the review is lengthy. It is expected that recommendations will be made by the Research Group by December 2012, which will then be considered by the LETR Consultation Panel and then the Approved Regulators themselves. Discussion is likely to be thorough and measured, and subject to consultation with the whole range of stakeholder. It will only be after extensive further discussion that any changes to legal education and training can be determined, and then implementation of agreed recommendations will in turn take a number of academic years to rewrite into legal education and training programmes and a further academic year to validate. This is important work and must not be hurried, but it means that the standard of training for the Bar should not be put at risk in the meantime. Evidence that will be obtained from the implemented Aptitude Test (and corresponding exit surveys of the early cohorts) will serve as assistance to the LETR and the approved regulators in considering their recommendations.

- 66 Existing requirements and proposals detailed in the Consultation have been published on the BSB website and this application will also be circulated to the other Approved Regulators at the same time as the application is submitted to the LSB.

The BSB's role in the Regulation of Training

- 67 It is crucial to ensure that the Vocational training is the best it can be, which is why suitable entry requirements must be in place to ensure that candidates have the appropriate skills as well as academic ability. This is not possible under the current system where weak students hold back others, either in practical sessions, or where staff have continually to stop and explain complex ideas and concepts. In addition, since training takes place in small groups (normally 6 or 12), the experience can vary enormously depending on groupings. It is difficult to ensure continuity which means that good students can be held back, performing less well and forfeiting the possibility of progressing to practice. It is not possible to 'stream' candidates on a course that is effectively only 8 months long, because of possible accusations of discrimination, appeals etc.
- 68 These requirements are intrinsically linked to the education and skills required of a barrister and it is therefore totally appropriate for the BSB to ensure the right skills at the right level are specified. It is therefore essential that, like other professional bodies, the BSB plays a role in the regulation of legal education and training for the Bar. This must cover the setting, assuring and maintaining of standards at each stage of training, including the quality of training itself as well as the standards verified as having been attained by successful candidates on completion of a particular phase. There is extensive literature available on the role of Professional Statutory and Regulatory Bodies (PSRB's) in UK Higher Education, for example the work done by the HE Better Regulation Group (in association with Universities UK, the Dept for Employment & Learning and the Higher Education Funding Council); the Quality Assurance Agency for Higher Education (QAAHE); and the Professional Associations Research Network (PARN). Individual professional bodies similarly involved in the accreditation of undergraduate and postgraduate education and training (eg entry requirements, quality of delivery and exit standards of the courses they accredit) are too numerous to list in full but a selection is indicated.²
- 69 The LSB has suggested that, as mentioned in the Wood Report on the BVC (para 93), other ways of monitoring entry to the Bar Course should be considered. This might, for example, be the BPTC Providers or the Inns of Court, rather than the BSB. With regard to the BPTC Providers, it would be completely inappropriate for the BSB to leave the administration of entry requirements for the course to those who might have a conflict of interest in terms of recruiting as many students as possible due to the significant fees charged.
- 70 The distinction must also be made between minimum entry requirements, set by the professional bodies and additional selection criteria used wherever there are more applicants than places – as will be the case at most of the nine Providers. The issue here

² In no particular order, SRA (set entry requirements for Qualifying Law Degrees, LPC); General Dental Council; General Medical Council; Nursing and Midwifery Council; Health Professions Council; British Psychological Society; Architects' Registration Board (ARB); Royal Institute of British Architects (RIBA); Royal Town Planning Institute; Institute of Economic Development; Institute of Civil Engineers; Institute of Structural Engineers; Institution of Electrical Engineers; Institution of Mechanical Engineers; British Computer Society; Institute of Physics; Association of Chartered Certified Accountants; Chartered Institute of Management Accountants; General Social Care Council

is that Providers could then set their own entry requirements and standards (up to nine variations) unregulated, with no continuity or central oversight and unscreened for example for equality and diversity. This runs the risk of severely disadvantaging some applicants depending on where they applied. One Provider already uses additional selection tools, in the form of a competitive filter, but this is a completely different approach from the BCAT which is looking for national minimum competencies. The alternative suggestion that the Inns should set up such additional testing is not permitted by the BTRs which state that the Inns must accept those who apply for membership (BTR12 'The Inn must admit the applicant if the applicant ... is eligible for admission'). To sum up, the quality of education and skills is a matter for the Regulator. It does not fall to the Course Providers who have vested interests in recruitment of large numbers, and the Inns do not have the capacity or authority for this task. It is in any case, as demonstrated above, a regulatory role.

- 71 The need for an additional entry required related to the skills as opposed to the academic prowess of candidates was widely recognised since before Wood and Neuberger. It has taken time for a proper test to be scoped, developed and then piloted over two annual intakes to ensure its validity and reliability. It has been suggested that it might be considered whether further delay should take place as the outcomes of the Legal Education & Training Review (LETR) are awaited. Recommendations from the LETR Research Group are expected by December 2012 and these will then be considered by the relevant regulators, after which change may or may not be posited. This will require further discussion, followed by further consultation before any changes to the frameworks and processes for legal education can begin to be determined. Further time will be needed for rewriting of courses (which can take up to two years), followed by validation and accreditation processes which themselves require at least a further academic year. The need to ensure quality training for the Bar, and to assist prospective candidates in decision-making concerning whether to invest in such training cannot wait until 2020 – the target date for this work as given during the Upjohn lecture. To introduce the BCAT as soon as practicably possible will ensure that only those with the necessary skills undertake the Bar Course, thereby ensuring the quality of training at the Vocational Stage.

Conclusions

- 72 To sum up, the BSB considers that, as the Approved Regulator, it is within the BSB's role and remit to regulate education at the entry to the Vocational stage of training for the Bar of England and Wales in accordance with the Legal Services Act s.21 'qualification regulations.' The proposal is proportionate and targeted at this point of the process in relation to the ultimate aim of the effective delivery of legal services and does not place unreasonable additional barriers to progression in legal training.
- 73 The LSB has itself recently produced a paper on the role of education and training in regulation (Education & Training: its Role in Regulation', February 2012) in which it is stated that the LSB is 'increasingly focused on the role of education and training in making the legal services market work for consumers' clearly confirming that 'education and training is one of a number of regulatory tools that must be applied ... to support the delivery of the regulatory objectives.' As Regulator, the BSB is thus bound to pay due attention to this process. It is further made clear in this paper that an emphasis on how the workforce is ultimately chosen and trained is inevitable (para 5). A strong case is made for 'regulatory supervision of quality' (para 16) 'in order to avoid a race to the bottom.' The quality of education is a key way of ensuring that ultimately the regulatory objectives are met.

- 74 The proposal sits well with the Regulatory Objectives (as indicated in paras 44-51) and also with the Better Regulation Principles, similarly indicated (paras 52 -57 above). The LSB should warmly welcome the proposal since it would support the regulatory objectives; carries out the intention of the Legal Services Act; upholds the public interest; relates only to the eventual licensing of persons for which it is a licensing authority; and has been properly developed and carried out in accordance with procedures (s.25).

Date of implementation

- 75 It is proposed that students will be able to commence applying for the BPTC to start in September 2013 from October 2012. The BSB would like to have the rule change implemented so that all students starting the Course in September 2013 will have completed the BCAT to the required standard. To this end, ideally the BSB would like the rule to be approved as soon as possible, so it can be advertised and implemented before the online application system for 2013 which opens in October 2012. Students could then apply and complete the BCAT (once set up by Pearson Vue in summer 2012) as part of the application process. The anticipated time line would be as follows:

22 March 2012	Approval by BSB
26 April 2012	Submission of application for rule change to LSB
May -July 2012	LSB approval period
May-Aug 2012	12 week lead in for Pearson Vue to set up the BCAT
July 2012	Publicising the new system
Sept 2012	BCAT in place and available to applicants
Nov 2012	BPTC Online opens (the Test must have been available)
Sept 2013	Candidates must have attained the BCAT threshold as defined prior to commencement of the BPTC.
Sept 2013	Analysis of BCAT performance as against acceptance and enrolment on courses (Sept 13 starts) Analysis will cover gender, ethnicity, age and other protected characteristics that relate to the aims of the BSB to ensure diversity. It will be published on the BSB website
Nov 2013	Second cohort of applicants with BCAT requirement
July 2014	Monitoring of performance on BCAT as against performance on the course (first sits)
Sept 2014	Analysis of BCAT performance as against acceptance and enrolment on courses (Sept 14 starts)
Nov 2014	Monitoring of performance on BCAT (of 2013 starts) as against performance on the course (including resits) Analysis will cover gender, ethnicity, age and other protected characteristics that relate to the aims of the BSB to ensure diversity. It will be published on the BSB website
Spring 2015	Completion of review of first year of process and reconsideration of cut score (if needed)

Consultation Processes Undertaken

- 76 Details of consultation processes and findings are appended as follows:
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|---------|---|
| Annex E | Formal Consultation Document (Dec 2011 – Feb 2012) plus example questions at E2 |
| Annex F | Analysis of responses to the consultation |

- 77 Further information on consultation processes are included above. Opposition was previously raised by the OFT to the proposals for an Aptitude Test but they have not made any further comment or submission with regard to the BCAT itself. There have been no challenges to the proposed BCAT, in contrast to issues raised by minority and ethnic groups concerning English Language Testing for those whose first language is not English. These suggested that the BSB should have a universal policy.
- 78 The Providers themselves are supportive of the proposal and have assisted and co-operated with its development, especially the operation of the pilots over the past two academic years.
- 79 The BSB undertakes to continue to monitor the Test once implemented, by considering success rates on the course as against those on the test, and also compared with previous years. This is done by means of Annual Monitoring Reports and statistics from the Providers (due December each year). The BSB will continue to review the entry qualifications of applicants as against pass rates in the event of the BCAT being implemented. This will be carried out by analysis of student data and pass rates, as notified by Providers.

Bar Standards Board

26 April 2012

The following supporting material is attached:

- Annex A Neuberger Report on Entry to the Bar, 2007
<http://cms.barcouncil.rroom.net/assets/documents/FinalReportNeuberger.pdf>
- Annex B The Wood Report on the BVC, 2008
(http://www.barstandardsboard.org.uk/media/1353435/bvc_report_final_with_annexes_as_on_website.pdf)
- Annex C Examples of poor quality work by current/prospective graduate applicants
- Annex D Evidence of weak students and the impact on others, derived from recent examiner reports
- Annex E Consultation Document (for Dec 2011 – Feb 2012) including Watson Glaser example questions (at E2)
(see [http://www.barstandardsboard.org.uk/about-bar-standards-board/consultations/open-consultations/bar-course-aptitude-test-\(bcat\)/](http://www.barstandardsboard.org.uk/about-bar-standards-board/consultations/open-consultations/bar-course-aptitude-test-(bcat)/))
- Annex F Analysis of responses to the consultation
- Annex G Impact assessment on policy (updated since 2012 consultation)
- Annex H The Specification and Requirements for the BPTC (2011-12) 'The Blue Book'
(http://www.barstandardsboard.org.uk/media/28049/bptc_final_pdf.pdf)
- Annex I Examples of student comments from student surveys 2010 and 2011

Records of meetings and discussions that took place during the Wood Review (2007-08) and a compilation of all comments made during the formal consultation (February 2012) are available on request