



REGULATING BARRISTERS

**Analysis of responses to BSB Consultation
on the Bar Course Aptitude Test**

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Preface

The BSB formal consultation on the Bar Course Aptitude Test (BCAT) was published in December 2011 with a closing date of 29 February 2012. This report reviews all the responses that were received to the consultation.

The report follows the order of questions laid out in the consultation paper, which remains available on the BSB's website at:

<http://www.barstandardsboard.org.uk/about-bar-standards-board/consultations/closed-consultations/>

The responses were considered first by the Bar Professional Training Course Subcommittee and then by the Education & Training Committee before being presented (with conclusions and recommendations) to the BSB (23 March 2012).

1 **Introduction:** The Consultation Process

A consultation was carried out by the BSB concerning the proposed Bar Course Aptitude Test, which was developed by the BSB following a major Review of the Bar Vocational Course (BVC) Course conducted by a Working Group of the BSB, chaired by Derek Wood QC. As part of the aim to raise standards on the revised course, in the public interest, the vocational stage of training for the Bar was recast as the Bar Professional Training Course (BPTC) with appropriately raised standards – on entry, on the course itself, and also with regard to exit standards. Whilst the last two were addressed by the use of clearer level descriptors and centralised examinations, the concept of an Aptitude Entry Test aimed to address standards on entry to the Course. Following an extensive amount of consultation during the review itself and while the test itself was being developed and piloted, the formal consultation differed in that it was based on a formal consultation document, containing concrete proposals following the reports of the independent consultant. The consultation paper was circulated to the profession, other interested organisations, students, providers of the Bar Course, the Inns of Court and the general public and consumers for comment. It was widely circulated to relevant stakeholders and attention drawn to its presence on the BSB website as appropriate. A summary of the developmental process was included in the consultation and need not be repeated here.

2 **Executive summary**

Analysis of the responses was undertaken by BPTC subcommittee, reporting to the BSB Education & Training Committee.

Overview

A total of 12 individual responses were received, totalling 37 pages of comments from Inns of Court, Bar Course Providers, committees, other organisations and students. A full list of respondents is included in Appendix C to this document. Responses were all detailed and considered. There was solid support amongst respondents to the consultation, concerning the need for additional entry requirements for the BPTC in line with the proposals suggested by the consultation document. In considering the responses, the Regulatory Objectives and Better Regulation Principles as determined by the Legal Services Act 2007 were borne in mind, particularly the aims of protecting and promoting the public interest; supporting the constitutional principle of the rule of law; protecting and promoting the interests of consumers; and promoting and maintaining adherence to the professional principles (see consultation document section 5). In addition, the aims and objectives of the LSB Regulatory Framework, issued in December 2011 while the consultation was running were also considered in relation to both the responses and the consultation itself.

Positive comment

There was unanimous support amongst those who responded to the question whether the current entry requirements for the BPTC needed to be changed. The rationale for the introduction of the BCAT also received unanimous support as well as the concept that this was justified by the data presented in the reports on the pilot tests.

There was general support for the view that the test would not be disproportionate to any particular group, since all groups would take the test in the same way, and confirmation provided by the range of respondents that there were no negative impacts that had not been identified and addressed. A range of general comment was made, as well as some suggestions for other ways of making entry standards more rigorous, the imposition of a minimum 2:1 entry requirement receiving significant support. There was support for the recommended (or a higher) cut score.

Negative comment

In spite of the support expressed for the implementation of the BCAT, a number of respondents suggested that more work and pilots of the test were needed, in particular with respect to analysis of success rates in relation to socio-economic background of students. The aspect of the proposal that received most opposition was that the number of resits should be unlimited. With one exception (a Provider of the BPTC) respondents felt there should be a limit to the number of attempts, which should be set at 2 or 3 as a maximum. Some respondents felt that they were not in a position to contribute to the specification of the cut score, especially those who admitted that their expertise in the analysis of statistical information was limited.

Findings and Recommendations

Findings and recommendations are included at the end of each section and also assembled immediately below. These will be subject to further consideration by the BSB itself, after which a way forward for implementing the proposed new model or any modified version will be determined, including the need to seek formal approval from the LSB.

Current entry requirements for the BPTC

R1 There is general support for the strengthening of entry standards onto the BPTC in order to ensure that outcomes are attained and the learning experience of Bar Course students is the best it can be, in the public interest. The project should be progressed.

Rationale for an additional entry requirement for the BPTC

R2 The introduction of the BCAT is justified by the data presented in the consultation documentation (including the original report of the Working Group), and it should be put in place as soon as possible

R3 Care should be taken to ensure that the effect of the BCAT is carefully monitored, including further consideration of the including of English Language testing and further consideration of any adverse socio-economic effects.

Justification for the BCAT in terms of the data available

R4 The data supports the introduction of the Test but future monitoring should track results beyond admission to the course, to the pupillage stage and even practice at the Bar (including the numbers of candidates who fail the test and the frequency with which they do so).

Identification of likely failure by means of the BCAT

R5 Whilst the majority agreed that the BCAT could reliably identify those who were likely to fail the BPTC, the Test must be carefully monitored to ensure it can identify more precisely those likely to fail while sparing more of those likely to pass.

Appropriate cut score

R6 The cut score should be set at -1.34,¹ but reviewed regularly, and amended if necessary by the BSB.

Number of re sits available for the BCAT

¹ The precise figure was agreed by the BSB at its meeting on 22 March 2012, which was in line with the view of the Education & Training Committee and the BPTC subcommittee. This would identify the lowest 10% of students.

R7 Although due consideration has been given to the points raised in favour of limiting the number of attempts at the BCAT, for reasons of equal opportunity and access, the Education & Training Committee recommends that there should be unlimited attempts at the Aptitude Test permitted, as recommended by the Working Group

Possibility of disproportionate effect

R8 The Test does not have a significantly disproportionate effect on any identifiable group, but this should be carefully monitored.

Negative impacts not so far identified

R9 The system does not appear to have any negative impacts that have not been identified but this will need to be closely monitored.

Other ways of making the entry standards on the BPTC more rigorous

R10 The BSB should take on board the further suggestions as to entry standards which should be addressed as the implementation of the BCAT is monitored and reviewed

4 Analysis of Responses

4.1 Profile of respondents

There were 12 separate responses from individuals and organisations. It seems that the low response on the final formal consultation was due to the wide consultation process that had already taken place during the Review of the Bar Course itself (2007-08) and in the pilot period. A full list of respondents appears at the end of this report (Appendix B to this report). A number of organisations gave very full and measured responses, but there were also some detailed responses made by individuals on a more personal basis. Groupings were classified as follows:

Table 1

Type	No.
Individuals (past and present Bar Course students)	2
Individuals (external examiners)	1
BPTC Provider	1
Inns of Court and COIC	4
Specialist Bar Associations	1
Professional and Regulatory Bodies	1
Committees of the Bar Council	1
Commercial organisations	1
Total	12

4.2 Quantitative analysis of views expressed

Not all respondents adhered to the consultation questions as posed, and not all of the questions were addressed by those who replied. Some views on the precise questions were deduced by inference. The number of responses was so small as to make a detailed quantitative analysis of findings (eg percentage responses to all questions) inappropriate.

5 Responses to individual questions (Questions 1-12)

The aim of the consultation questions was to determine the level of agreement with the recommendations put forward regarding the implementation of an additional entry test requirement for the Bar Course. Responses to each of the 10 questions are considered in detail below, with comments summarised or cited verbatim. Sources are identified unless a request was made otherwise. A response or further recommendation is indicated at the end of each section, drawn together in the summary above.

Q1 Do you consider that current entry requirements on the BPTC need to be changed?

There was unanimous support amongst those who responded to Question 1 concerning whether the current entry requirements for the BPTC needed to be changed. Many responses alluded to the concern that has been expressed for many years about the number of students accepted on the BVCs, now the BPTCs, who are unsuited to practise at the Bar. Information that was provided in the BVC Review and the BCAT consultation was emphasised as underlining the need for additional entry requirements. For example, in the years 2003-2009 only an average of 64% of students passed all BVC modules at the first attempt (a figure cited by several respondents), and about 10% failed the course entirely even after several re-sit opportunities. Many who pass are unable to obtain pupillage so 'the consequences of admitting students who ultimately fail are grave, in the form of wasted expenditure, wasted time and personal disappointment.' Apart from this, it was felt that poor students have a significant effect on the quality of the group sessions which form about 70% of the courses, and thus 'frustrate and impede the progress of their more able contemporaries.' This has been verified by students, including those current/recent students who took the trouble to respond to the consultation.

There was general agreement that the proposal of the Wood Review, to devise a test to screen out the weaker students who are not suitable to undertake the course, has been shown to have been subject to extensive pilot studies and rigorous statistical analysis. It was recognized that the test does not examine oral language skills, nor suitability for pupillage or aptitude for practice at the Bar itself. It does however, as respondents agreed, assess critical reasoning, for which high level language skills will clearly be needed. This approach was thoroughly supported by the Inns of Court, Bar and other associations that replied, as well as by student respondents.

The only BPTC Provider to reply also supported the concept of maintaining standards for entry to the BSB and the need to 'ensure that students on the BPTC have the intellectual abilities and ethical disposition necessary for success at the Bar' but they added the proviso that changes should be consistent with offering an equality of opportunity to capable applicants. More data might be needed, they said, on the analysis of cohort performance on the new course, even though it was originally hoped that the BCAT would be in place in time to assist in maintaining the all important standards for the new course.

A current student (who has pupillage 'at a leading set') commented 'The requirements should be set high. The quality of student on the course currently really dumbs-down the course. Peer-group effects are very strong: we waste a lot of time on people who are never going to be barristers- Bring this in as soon as possible please.' The BVC Review, commented another, demonstrated that the students themselves felt that entry standards should be raised (in line with evidence provided as part of the consultation).

Others agreed that the entry requirement of by qualifying degree classification alone has proved to be insufficient to ensure a consistent minimum standard with the result that 'Students incur considerable course and living expenditure in respect of a process in which they are unlikely to succeed. It is unfair to encourage students with limited aptitude to spend large sums of money and incur large debts in the absence of a reasonable prospect of success.'

Another similarly emphasised: 'The current state of affairs whereby large numbers of students take the BPTC with little or no realistic prospect of passing the course is not only unfair to those students who may have invested upwards of £16,000 in the course but it also affects the experience and education of the more capable students.' Thus, they said, to maintain the current situation would affect the training of the whole group, lowering the standards and outcomes needed for progression.

Much comment was made about how those without the required skills compromise the effectiveness of the training for others, and impact on the intended outcomes of the course. Active participation by students is vital for interactive advocacy training and other skills sessions, as well as in group discussions, let alone time taken by tutors to explain concepts enabling weaker students to catch up. Compromising the training of others is likely to have a negative impact on the standard achieved by more suitable candidates, and thus have a serious effect on the outcomes attained. The use of a suitable test is thus widely seen as risk based and proportionate.

In addition to the above, many respondents emphasised the need for the necessary language skills and a record of high academic achievement. The proposed BCAT, it was argued, did not entirely address the language issue which also needed sorting out more securely (although difficulties with this were acknowledged).

Another perspective was provided from the Employed Bar, including BACFI, who also welcomed the proposals to introduce an aptitude test for students wishing to undertake the BPTC, due to the way in which the presence of weak students, unlikely to gain pupillage, limit the potential learning experience of the more able students undertaking the BPTC. They expressed concern about anecdotal evidence that some BPTC course providers are anxious to maximise earnings by recruiting as many students as possible for their courses, regardless of the lack of career prospects for the less academically and intellectually gifted.

Overall, the view appeared to be that the entry requirements need to be changed, in order to help the able students, to minimise risk to standards and disappointment to and expenditure by students who have no realistic prospect of a career as a practising barrister. It was pointed out yet again that, during the review, a student survey revealed that 49% of student respondents stated that their experience on the course was "adversely affected by the learning needs of other students" clearly due to the interactive nature of the course, where students work together in discussion groups, negotiation exercises and interactive advocacy sessions.

Finally, The Law Society pointed out that they had also considered the applicability of aptitude testing 'as a way to achieve a narrowing of the gap between the numbers passing the Legal Practice Course (LPC) and those securing a training contract.' (This is a different intention and policy from that of the BSB, which is not interested in limiting numbers per se, but in ensuring that only suitable candidates undertake postgraduate specialist training). The Law Society recognised that due to the current nature of the BPTC 'it may benefit students to work alongside those of a similar capability so that a group is not disadvantaged by a student or students who are unable to keep up with the standard of the others.' Their consideration of such testing has been put on hold however, awaiting the outcome of the Legal Education & Training Review (LETR).

Conclusions and Recommendations:

- R1** There is general support for the strengthening of entry standards onto the BPTC in order to ensure that outcomes are attained and the learning experience of Bar Course students is the best it can be, in the public interest. The project should be progressed.

Q2 Do you consider that the introduction of the BCAT is justified by the data presented in this report?

There was broad agreement amongst respondents that there is a high probability that the Test would be likely to address to a significant extent the problems that have been identified. Respondents agreed that fair access to the profession would not be restricted by such a test and suggested that open access may even be enhanced in this way.

The Test, it was felt, would also benefit weaker students since it can be used as a diagnostic tool by candidates who wish to evaluate their chances of success on the course before investing time and money in the BPTC. 'It is unfair in the extreme' it was said 'to permit students to embark on the course who have no realistic chance of passing at the conclusion.' The cost to students (and/or their sponsors or families) is considerable in terms of financial, as well as emotional, investment. This applies particularly to students needing to relocate (possibly from overseas) in order to study. Failure is far worse than not having undertaken the course in the first place and those with unrealistic aspirations beyond their ability should be informed before they are permitted to undertake the course.

Attention was drawn to comments received during the BVC Review and Consultation Period (October 2007 – July 2008), as set out in Appendix 1, which clearly indicated the issues and the majority view in favour of aptitude test prior to admission onto the BPTC. With the exception of just one BVC Provider at that time, the course providers themselves, as well as the students, agreed. Emphasis was placed on the fact that nearly 50% of students on the course (as asked during the review) stated that their experience had been adversely affected by the performance of other, less able, students. Conferment of a degree does not, nowadays, indicate ability to succeed on the course, so the rationale for introducing the BCAT, to ensure that only those with a realistic chance of passing the BPTC are admitted onto the course, is seen as both a necessary and desirable objective. As one respondent put it: 'Sadly, many students with degrees lack a command of spelling and grammar and, as the BSB proposes, it will be very helpful to test these as well, in a separate test.' In discussion on the cut score, a Bar Course provider suggested that 'consideration ought to be given to whether it is desirable that applicants with Upper Seconds and Firsts should be prevented from joining the BPTC by reason only of failure in the BCAT, given that their degree classification demonstrates their higher cognitive ability' but to grant exemptions of this type would appear discriminatory and unfair if not all were required to take the test. The additional cost of the Test was thought insignificant in terms of the cost of the course as whole.

Some additional issues were raised in response to this section, for example that it would be even more ideal if a test could be devised that tested suitability for actual practice at the Bar. But it was realised this would be costly and impractical at present. It might be argued that this is the year long Bar Course, at which students perform and are assessed according to their varying abilities.

Another point raised here was the issue of fluency in the English language. The need for testing minimum standards of spoken and written English was also supported, given the nature of the profession the students aspire to join (notwithstanding that some will wish to return to overseas jurisdictions). Although good levels of English are necessary for the BCAT, several groups proposed that there should be an appropriate language test introduced alongside the BCAT, since, apart from individuals' lack of suitability and likelihood of failure which it would be in their interests to know in advance, this similarly had an effect on the attainment of the intended learning outcomes for the student group as a whole. However, respondents felt that the

introduction of the BCAT should not be delayed, however, whilst further consideration is given to oral testing.

By contrast with the above, some issues were raised concerning the need to monitor the BCAT very carefully and ensure that the Test did not deter some students. The only BPTC Provider to respond commented that they supported BCAT 'in so far as it is used to test the general cognitive ability of applicants in an objectively and demonstrably fair way' but they also drew attention to the need to avoid unfair discrimination, due to the importance of increasing social mobility, as also strongly supported by the Bar (cf Neuberger Report). Concerns were expressed about a possible negative effect on social mobility because, they stated, applicants from more privileged backgrounds tend to perform better in aptitude tests (see also responses to Q7 and Q8 below). Another point made here was that, while the BSB's stated aim of improving the student experience and raising standards on entry to and exit from the BPTC was supported by the implementation of the BCAT, this could be seen as 'a relatively minor benefit to be derived from an expensive additional hurdle' (Law Society).

Overall however, there was overwhelming agreement that introducing a test to evaluate critical reading and reasoning skills would be a very positive step.

Conclusions and Recommendations

- R2 The introduction of the BCAT is justified by the data presented in the consultation documentation (including the original report of the Working Group), and it should be put in place as soon as possible**
- R3 Care should be taken to ensure that the effect of the BCAT is carefully monitored, including further consideration of the including of English Language testing and further consideration of any adverse socio-economic effects.**

Q3 Do you agree with the rationale for implementing an additional entry requirement for the BPTC in the form of a universal Aptitude Test (BCAT)?

All respondents agreed with the rationale as presented for the introduction of the Test, although some raised issues concerning the proposed format (for example an External Examiner of the Course). It was largely agreed that the pilots had been carried out with extreme care and the data provided and analysed by the consultant were as comprehensive as could be assembled. The essential data is focused on the pass, referral and failure rates from 2003–2004 until 2010–2011, which indicates that the first-time pass rate has come down considerably in recent years with 44.3% of the measured cohort of 1258 students (558 in number) failing to achieve the basic level of competency in the year 2010–2011. It was noted that approximately 10% of students still did not manage to pass the course even when multiple resit opportunities were permitted. It was felt that this indicates too many students are accepted on the course who have very limited prospects of success in passing.

It was pointed out that only 182 students took part in the first pilot and these were self-selecting. This underpinned the second pilot when 1501 students completed the test (not all provided demographic information). Students may not have taken the tests as seriously as if their future careers depended upon the outcome, but there was still significant consistency in the results indicating that reliance can be placed on the process. Respondents noted that the data in the Final Validation analysis demonstrates a very strong and statistically significant correlation between the BCAT test score and BPTC results. Some respondents felt they lacked sufficient expertise as statisticians fully to analyse the comprehensive data supplied by the specialist, including the concept of a 'cut score' rather than a defined number or percentage as a pass mark. It appeared clear, however, that evidence shows the BCAT as a better predictor of BPTC results than 'A' level results, University degrees or a combination of them. As such, respondents felt, its introduction is justified. The Test does not, of course, aspire to be the best predictor of success at the practising Bar but more analysis could be carried out on the score's prediction of a student's progression to pupillage. The Law Society believes that 'the real issue to be addressed is the mismatch between the numbers of students passing the BPTC and the number of available pupillages [sic]'. But (as indicated above) the BSB is not aiming to use the BCAT as a means of reducing numbers in order to bring the numbers of those doing the Vocational and Professional stages more into line. The approach is rather concerned with standards.

The Provider respondent made reference to the definition of aptitude as presented in the Dewberry Report on Aptitude Testing and the Legal Profession (2011), according to which BCAT tests general cognitive ability, not innate suitability for the BPTC, pupillage or a successful career at the Bar. The Provider noted however that the data as presented support the conclusion that BCAT is a valid and reliable test of general cognitive ability and can make valid and reliable predictions about applicants' general psychological and behavioural characteristics which are relevant to the BPTC and a career at a barrister. The Provider concluded that it should therefore be supported, but as one of a range of requirements for entry to the BPTC. The data presented in the report, while not conclusive, did seem to support the hypothesis that those who do badly on the BCAT would not pass the BPTC.

Conclusions and Recommendations

R4 The data supports the introduction of the Test but future monitoring should track results beyond admission to the course, to the pupillage stage and even practice at the Bar (including the numbers of candidates who fail the test and the frequency with which they do so).

Q4 After looking at the results of the pilot tests, do you consider that the BCAT will reliably identify students who are likely to fail the BPTC ?

A larger number of respondents pointed out that the answer to this question must depend on the selection point for the cut score, but, given the selection of an appropriate cut score, then 'Yes, it seems to do this well' and 'the limited statistical analysis of the data presented in the Consultation paper suggests that BCAT can make reliable predictions.' Another confirmed that, in their view, 'the introduction of the aptitude test will appreciably reduce the number of students whose prospects of success on a BPTC course are very low. This can only be of benefit to those candidates as well as to the integrity of the BPTC courses themselves' and 'There is undoubtedly a marked correlation in the pilot between the outcome in the aptitude test and BPTC.'

A current student (who has a pupillage) suggested that the appropriate outcome to measure the effectiveness of the test should be against those who attain pupillage and/or tenancy. He indicated a view that many students who have pupillage regard the BPTC as a formality and make no effort to achieve a good pass. So 'passing the BPTC' is not an appropriate point against which to assess performance. However, evidence shows that there is indeed a strong correlation between performance on the BPTC and the obtaining of pupillage and the days are past when just passing the Bar Course was sufficient. An Outstanding or VC at BPTC considerably increases chances of gaining pupillage. In any case, fewer than 20% of pupils have pupillage organised prior to taking the course.

The Provider respondent noted that 'notwithstanding the careful presentation of the data and analysis, aptitude testing is not an exact or precise science.' They felt that predictions about an individual applicant's likely failure on the BPTC must be treated with caution if other qualifications, e.g. degree class or A-level grades, suggest otherwise, but the option to re-take could redress such a situation. They expressed the view that degree classification is as a reliable and proven indicator of success on the BPTC, yet in fact this is not always so and some of those with higher degree classifications do less well.

More significantly, Gray's Inn considered the test would not reliably identify students likely to fail the BPTC. On their analysis of the data, they suggested that 'the pilot test results do not provide comfort that the test would be reliable in identifying students likely to fail the course. On the contrary, if being placed in the lowest band is treated as failing the test, then the majority of students who failed the test passed the course, and the majority of students who failed the course passed the test.' They pointed out that some students did well on the course having done badly at the Test. This might suggest they did not take the test seriously (for which there was a body of anecdotal evidence), but Gray's Inn found the results to be 'understated' and felt that some might be placed in the lower bands who might in fact pass the course (see Gray's submission for details). These could of course retake the Test if necessary. Inner Temple also observed that some students who went on to gain an Outstanding or Very Competent were placed in the bottom two test bands. They acknowledged that some of these students may not have invested as much effort in the pilot test as they would have done for a "real" test upon which their future depended, but suggested that further research should be undertaken to ensure that the test accurately identifies those likely to fail or pass the course.

On the other hand, Middle Temple strongly felt that 'in broad terms there does seem to be a correlation between low test scores and failure or referral rates on the BPTC, and between higher test scores and better results on the BPTC. Therefore, while the test is imperfect as a precise identifier of course results, it has real value.' Lincoln's Inn also agreed that the introduction of the aptitude test 'will appreciably reduce the number of students whose prospects

of success on a BPTC course are very low – which can only be of benefit to those candidates as well as to the integrity of the BPTC courses themselves. There is undoubtedly a marked correlation in the pilot between the outcome in the aptitude test and BPTC.’

The Bar Council Training for the Bar Committee similarly pointed out that whether the BCAT reliably identifies students who are likely to fail will depend, in part, on the selection of an appropriate Cut Score for the BCAT (for example, the statistics from the Final Validation analysis dated November 2011 suggest that a Cut Score of -1.34 would reduce the failure rate on the BPTC from 8.2% to 7.0% (a reduction of only 1.2%) whereas a Cut Score of -1 would reduce the failure rate on the BPTC to 5.6%).

BACFI considered that there might be variation in ‘the difficulty of passing the BPTC in any particular year’. In spite of the new standards on the BPTC they felt that ‘the exams [have] been significantly "dumbed down" over the last 15 years, and this is a continuing trend’, with students being given advanced notice of questions and ‘crib sheets to guide them in answering questions.’ This is not the general experience of the way that standards have been raised on the new BPTC, although there is a view that the new course is indeed, and as intended, of a higher standard with more closely specified outcomes than the old BVC.

Reference was also made to the number of re-sits allowed in this context, with the caution that the position might be undermined if students could learn to pass the exam through repeated exposure, as opposed to through having gained the skills the BCAT is testing.

Key issues identified are therefore the effect of the above on the cut score (which should not be too demanding) and how many resits should be permitted. Practice tests will be available to minimise any possible disadvantages.

Conclusions and Recommendations

R5 **Whilst the majority agreed that the BCAT could reliably identify those who were likely to fail the BPTC, the Test must be carefully monitored to ensure it can identify more precisely those likely to fail while sparing more of those likely to pass.**

Q5 From looking at the evidence in this report, what cut score would you consider to be most appropriate ?

Whilst several respondents pointed out that they were not trained statisticians (as indicated by legal academics who replied or members of Inns Education Committees) many expressed a view, based on the information provided by the consultant. As stated above, the aim is to prevent students who do not have the necessary ability to pass the course from taking the BPTC. The higher the cut rate, the more students will fail the test. The key question is therefore where to set the cut score so as to best achieve that aim, but without aiming at a 100% pass rate. A cautious approach was recommended by some in setting the cut score, but, of those who expressed a precise view, the level of support was as follows:

Proposed cut score	Level of support	Comments
-1	25%	<ul style="list-style-type: none"> • This is relatively high, but satisfactory in terms of the possibility of resits. • -1 appears to represent the best balance in terms of filtering out those students who do not have any hope of passing the BPTC without having a significant impact on diversity. • If it [the cut score] is too low it will let in too many unsuitable students. • Scores between -1.25 and -1 provided a marked reduction in students who go on to fail the course without creating the enormous barrier for applicants or excluding many students who had good course outcomes • Bearing in mind the availability of re-sits, the imperative of maintaining high standards, and considering the likelihood that students doing the test “for real” may do better than those who did the BCAT only in a pilot study, we recommend the adoption of the more demanding cut score of -1.0. • We recommend the adoption of the more demanding cut score of -1.0. However, the effect of this should be reviewed after two years.
-1.25-1.34	33%	<ul style="list-style-type: none"> • A conservative approach to begin with, and would support a cut rate of between 1.25 and 1.34. • It would seem to follow that the adoption of cut scores of -1.34 or -1.5 would do little to remedy this situation [percentage failing the course]. On the other hand cut scores of -0.5 and -0.75 produced high failure rates even for those who obtained “outstanding” or “very competent” grades. • We agree with the recommendation to introduce a conservative cut score of between -1.34 and -1.25.

In spite of a significant minority wishing to see a cut score of -1, the majority of respondents looked for the lower cut off point of between -1.34 and -1.25, as recommended by the report. As with all other examinations, the cut scores would need to be revisited regularly and amended as a result of statistical data and cohort performance in order to remain appropriate.

Conclusions and Recommendations

R6 The cut score should be set at -1.34, but reviewed regularly, and amended if necessary by the BSB.

Q6 Do you agree that an unlimited number of re-sits for the BCAT should be available (subject to anti-fraud frequency monitoring)? If not, how many do you consider to be appropriate?

The issue of the availability of resits for the BCAT (with no time limit) was the one area where there was overwhelming opposition amongst respondents to the consultation. Only one group (the Bar Course Provider) agreed with the proposal that there should be unlimited resits available. The BVC Working Group had put forward this proposal since comprehension and language skills (important for but not specific to the Test) are capable of being improved with time. Unlimited attempts also make for fair access and the removal of any discrimination. However, even those who supported the concept of unlimited resits (the Provider) CLS supports the principle of unlimited attempts noted that repeated attempts and/or coaching for this or similar tests are likely to result in the significant improvement in results that are not necessarily related to an individual's cognitive ability. They observed that the limited validity period of qualifying law degrees for enrolment to the BPTC may act as some sort of corrective to this phenomenon. On the other hand, most other respondents objected strongly to the idea of multiple attempts (open ended) being allowed. A suggestion was made by a student respondent: 'I don't understand why unlimited re-takes should be allowed - surely if a test is not passed, they should be made to wait another year to pass the test', ie that at least a year should pass between attempts.

Others were even more strongly opposed:

- NO. The test requires the application of a number of learned skills (all of which are required by a Barrister). However, the skills, as tested here, are NOT AT A VERY HIGH LEVEL. Some students will not have sufficient aptitude to learn these skills, but for many students these skills must be learned. I do not believe that practice and coaching would have a small effect. On the contrary a student of modest abilities could be coached to do well on this test. To allow unlimited opportunities to take the test may allow some slow learners to work up to the required minimum standard. Passing the test on this basis would not be a sound basis for proceeding to the BPTC.
- A maximum 2 re-sits (3 attempts) should be allowed for the proposed aptitude test ... Whilst there is nothing wrong with candidates acclimatising to a certain type of test, any candidate who has not achieved the minimum level after 3 tries plainly lacks the necessary basic essential aptitude. There is an identifiable risk that some candidates making multiple attempts will eventually pass ... because they have been able to learn how to pass the test Allowing multiple, unrestricted re-sits (subject to fraud monitoring) risks undermining the objectives of the test.
- No In summary, we think that resits should be limited to 2 in all, save where a student is able to produce a medical certificate to the effect that he or she was medically unfit to take the test, or tests, as the case may be. The aim is to prevent those who are likely to fail the course from embarking on the course. If a student fails the test 3 times, but then passes at the 4th or a later attempt, what is the likelihood of the student passing the course?
- No. It is our view that a limit should be imposed on the number of re-sits. By permitting an unlimited number of re-sits there is a distinct danger that this will undermine the primary purpose of the test, namely to ensure that only those who have a hope of passing the BPTC are admitted to the course.

- ... some form of limitation on the number of re-sits should be imposed, whether this be an overall cap on the number of re-sits, a minimum period between re-sits, or a combination of the two. Our provisional view is that a maximum of two re-sits (i.e. 3 sittings in total) together with a minimum period of 3 months between each re-sit would strike an appropriate balance between providing candidates with a fair opportunity to demonstrate their aptitude and achieving the BSB's stated aim of ensuring that only those with a realistic chance of passing the BPTC are allowed to commence the course.
- We suggest that two re-sits should initially be permitted, and an unsuccessful candidate should not thereafter be permitted to re-sit until five years elapsed. We make this suggestion in the interest of "late developers".
- We consider that a maximum of two resits would be appropriate. Any student who has failed twice but still wishes to take the BPTC should be interviewed to assess why the student failed and still wishes to take the course, and why that student believes he or she will be able to cope with the course.
- We also feel that allowing for unlimited re-sits could give preference to those who can afford the £67 required for each test. This would therefore prejudice those from disadvantaged backgrounds where cost could be an immediate impediment.

A great deal of work was done by several groups, particularly the Training for the Bar Committee, on assessing the probability of questions in the Bank recurring at least once in a specified number of sittings, which they felt would have an effect on the candidates' ability to pass if allowed unlimited attempts (suggested as a 96% probability that the student would have already seen 18 or more questions on previous attempts). However, since candidates would not be provided with the correct answers, the advantage of multiple attempts would perhaps be limited. Disagreement was also expressed with the concept of allowing resits to permit candidates to develop their language skills. The paper itself indicates that practice and coaching for the test can improve a candidate's results and, in any event, it was suggested that the language of the example questions is not complex. Nearly all the respondents felt strongly that two re-sits are enough (that is, three attempts in all).

It is interesting to note that the only commercial organisation to respond, 'Clear Thinking Profit (a 'VAT registered UK consultancy and training business that teaches critical thinking skills, being a European affiliate of USA firm Agile Critical Thinking') submitted formal comments on the proposal. They commented in particular (in the context of their own experience) on whether candidates from certain backgrounds might be disadvantaged because they might not have been introduced to cognitive skills practice earlier in their lives. They also commented on the issue of resits and coaching. They drew attention to the proposed provision of full practice test versions which 'help to alleviate any differential benefit of participating in coaching or other activities' which seems to acknowledge that significant improvements in individuals' performances may indeed result from 'teaching to the nature of the test' and raise students from below to above the cut point. They raised questions about the importance attached by successful institutions and educators to critical thinking in preparation for advanced studies and what ethical differences there might be between undergoing additional paid private coaching or formal studies pre-Law degree course with coaching pre-BCAT? They suggested that 'pre-BCAT coaching' might actually assist the BSB to achieve its intentions regarding BCAT introduction, differentiating those who have an aptitude for CT from those who, despite additional and focused coaching, cannot reach required entry standards. Some might yet succeed in working towards an improved understanding and practice of those skills within the context of a barrister's career. They felt that the resit role needs further clarification since it would reflect directly on the

policy of determining permissible numbers of retakes as a means of achieving the intended screening function of the BCAT.

Finally, attention was also drawn to possible difficulties in policing of any cap in the number of attempts, which should be raised with Pearson Vue with specific terms written into their contract to this effect.

Conclusions and Recommendations

R7 Although due consideration has been given to the points raised in favour of limiting the number of attempts at the BCAT, for reasons of equal opportunity and access, the Education & Training Committee recommends that there should be unlimited attempts at the Aptitude Test permitted, as recommended by the Working Group.

Q7 After looking at the results of the pilot tests, do you consider that the introduction of the proposed BCAT would have a disproportionate effect (either positive or negative) on any particular group compared with others?

The Consultation paper acknowledges that unjustifiable discrimination is unacceptable, a concept with which respondents fully agreed.

Some pointed out that ethnic groups, disabled students and those without English as a first language were less well represented than others (eg gender, age). Others suggested that those who have been out of education for a while may not feel as comfortable in the setting as others (which would also apply to assessments on the course itself) but the option for repeating the test will address this.

The BPTC Provider also noted that research has been carried on aptitude tests which indicates that those from privileged educational, family, and cultural backgrounds will tend to do better than others in aptitude tests. However this research related to conventional aptitude tests, used to select 'the best' rather than the sort of test based on threshold entry standards that the BSB is seeking to introduce. Consideration was given to additional research (such as the Dewberry report commissioned by the LSB) which was duly considered in the light of the Bar's desire to widen access to its profession.

Generally however, respondents agreed that group comparisons had been carefully considered in detail and did not cause concern. There was clearly no gender bias. Those for whom English is not their primary language were few in number and did less well on the BCAT, but as their examination scores are even lower relative to the majority group there is no consequent bias. The small group of older students did slightly less well in the BCAT, but does not appear to have meaningful effect. There is no prima facie evidence of disadvantage to those with disabilities, for whom, of course, reasonable adjustments must be made. In any event, the data demonstrates that there is no statistically significant difference in terms of BCAT test score and/or BPTC results between disabled candidates and non-disabled candidates.

With regard to BME candidates, scores for Asian and other ethnic groups shows that there was over-prediction of their course results, and therefore such bias as there may be is against the white group rather than against the Asian and other ethnic groups.

Overall, the results were confirmed as not having a significantly disproportionate effect on any particular group, especially if the cut score is kept at the suggested conservative level and reasonable adjustments are available. A suggestion was made that it would be useful to know if tests of this type have been introduced in other common law jurisdictions, and whether there is any evidence that such tests have had a disproportionate effect.

Conclusions and Recommendations

R8 The Test does not have a significantly disproportionate effect on any identifiable group, but this should be carefully monitored.

Q8 Are there any negative impacts that have not been identified in the equality impact assessment?

It was suggested (as in responses to the previous question) that environmental factors such as socio-economic background, should be more thoroughly investigated before the Test is put into operation. The BPTC Provider noted that 'a body of literature suggests that tests similar to BCAT have a disproportionate impact on some ethnic groups regardless of language ability' but (a) this was investigated already in the pilot and (b) the literature relates to aptitude tests aimed at selecting the best candidates, not tests of the nature of the BCAT.

It was pointed out that there should be flexibility in booking tests, such that those with work and/or family care commitments do not perceive themselves under difficulty or disadvantage, especially in relation to the times or days of the week when testing will be offered.

Another respondent acknowledged that socio-economic data was not collected for comparison with Test and Examination scores but that the BSB was continuing to explore ways to collect this data and compare it. They encouraged the BSB to do so. They suggested that allowing for unlimited re-sits would disproportionately benefit those from more affluent backgrounds. Generally, people felt that the BCAT will not have any impact on gender or race equality because the rule applies to all applicants in exactly the same way.

Conclusions and Recommendations

R9 The system does not appear to have any negative impacts that have not been identified but this will need to be closely monitored.

Q9 Do you consider that entry standards on the BPTC could be made more rigorous in a way other than what is suggested in this paper? If yes, please expand?

A main view was that the entry standards as suggested by the Wood Review of the Bar Vocational Course and approved by the Bar Standards Board [ie including the BCAT] are fit for purpose. More analysis of nationwide performance on the new BPTC may assist future decision-making regarding whether the rigour of entry standards to that programme should be amended. Any alternative or supplement to the BCAT would need to be analysed and justified before being considered for implementation.

However, a number of suggestions were made about other ways in which the entry standards on the BPTC could be made more rigorous in order to ensure the correct outcomes are attained by graduating candidates, in the public interest. The suggestions made fell into several groupings and were as follows (cited verbatim or paraphrased):

English Language testing

- ‘An English oral test (additional to IELTS) is desperately needed to address basic verbal ability. I simply disagree that students should be able to pass the current oral examinations with pigeon English and slang. An advocate should possess a certain standard and command of the English language: e.g. in my view it is simply not acceptable for a BPTC student to finish each question with ‘init’.’ [recent graduate, July 2011 Call]
- ‘A separate but parallel spoken English exercise should be made compulsory in the interests of the credibility of the BPTC courses and in the interests of all BPTC participants. Students without a basic minimum level of spoken English are bound to undermine the effectiveness of the training of others for the reasons outlined.’
- The need for English language skills to be assessed before students embark upon the course.

Degree classification

- Undergraduate degree classification – suggested as a minimum 2.1, with lower grades considered in exceptional circumstances.
- ‘The current degree requirement for entry on to the BPTC course is a lower second-class honours degree... the reality is that the vast majority of those students who pass the course but do not have at least an upper second-class honours degree, indicating high academic achievement, will not secure a pupillage. Inner Temple’s monitoring of its pupils over the past three years indicates that 93% obtained an upper second-class honours degree or above... We would recommend the introduction of an upper second-class honours degree requirement from which the BSB may permit exemption in exceptional circumstances. We would recommend the BCAT be introduced alongside this requirement.’

Interviewing

- ‘Although resource-intensive, interviewing of all potential candidates must assist in identifying those who are unlikely to succeed on the course.’
- ‘We believe it would be very helpful for tutors to interview potential students and ask them to submit a piece of research they have conducted on a legal topic of their choice. We believe

this would help the tutors to assess whether the student has the necessary motivation to study on the course, whether the student has an enquiring mind, or indeed any understanding of or interest in the law. It will also indicate whether the potential student can evaluate information and summarise it. Students who have these qualities will be an asset in class and will work well with their fellow students.'

- 'One possibility which we believe may be worthy of further consideration is the establishment of a compulsory "taster day" prior to the commitment of fees for the BPTC. This might encompass a day of lectures and seminars explaining the work of the Bar and the statistics relating to pupillage and tenancy with the aim of giving students a significant "reality check" before they commit the time and money to pursue the training. The day could be run by the BPTC training providers and/or in conjunction with the Inns of Court. A day such as this would enable all potential candidates to have the harsh realities contained within the statistics explained to them.'

Final examinations

- An end of course pure (Legal) skills test, should be taken by all candidates to provide an objective comparative measure and a minimum skills standard (this is being addressed by the Centralised Examinations in the 'knowledge' areas).

General

- 'The Law Society believes, as stated above, that this is something the Legal Education and Training Review should address in terms of the disparity between the number of graduates and the number of pupilages [sic] available.'
- 'The limits of the BCAT are that it predicts only performance on the BPTC and not, as we have pointed out, potential as a barrister. However, we cannot conceive of any reasonably affordable scheme which would achieve that end, particularly because the qualities required for success in the very different fields of practice at the Bar are so diverse.'

Conclusions and Recommendations

- R10 The BSB should take on board the further suggestions as to entry standards which should be addressed as the implementation of the BCAT is monitored and reviewed**

Q10 Please insert any other comments on this consultation document here

In conclusion, a number of additional observations and comments were made, many of which partly referred again to issues raised in response to specific questions.

It was observed, for example that the BCAT does not test specific legal skills, and at least one respondent said they would like to see the BCAT include some questions with a legal skills element, drafted with lawyer input. The skills which are not tested by the current test, but which should be tested, are: Application of a legal principle to various factual situations; Recognition of factual propositions which are logically inconsistent; Applying legal definitions. Recognizing phenomena which fall within and without a particular definition.

The BPTC Provider suggested that there was a need for further evidence-based research to confirm that BCAT will not be unjustifiably discriminatory directly or indirectly.

Attention was drawn by a few respondents to the problem of the number who pass the BPTC, rather than the number who embark on the course and fail. Since there are many more students who pass the exam each year than pupillages (who then compete again with the students from the next year), the financial and human cost of this system is appalling and hugely wasteful. This seems more serious than students embarking on the BPTC who should not do so, although this would be likely to reduce numbers as an effect. The providers of BPTC have no incentive to match numbers to pupillages, or to see any reduction. The imposition of an upper second class degree as an entry requirement is put forward as a solution to this dilemma, even though it is beyond the specific remit of the current consultation.

The cost of the BCAT was raised as an issue, not only the cost to students but the cost to the BSB and hence the profession if expensive statistical analysis is required on a regular basis into the future. It is therefore hoped that a system can be devised which is easily operated and understood by all concerned. In relation to this also, and as suggested by the Wood report, the hope was expressed that the BPTC providers could develop a much closer relationship and ongoing dialogue with barristers in practice at the employed and self employed bar. This would enable the effectiveness of the BCAT to be monitored on an ongoing basis with adjustment if needed following practical experience of its impact - but without the need for a lot of expensive statistical analysis and the delays inherent in collecting and evaluating the information.

It was suggested that, with consent of candidates, their scores should be supplied to the Providers, in order to allow BPTC providers to choose those candidates that they believe have the greatest likelihood of passing the course and securing pupillage thereafter. However, knowledge of the number of attempts might prejudice applications.

The timetable of the BCAT needs to be carefully considered in relation to Inns of Court scholarships, such as the interviewing of students for scholarships and awards, after they have completed the BCAT. Discussions between the BSB and Inns should ensure that these timelines are recognised and scheduled for.

The Law Society suggested further consideration in the overall context of legal education and training, specifically the Legal Education & Training Review. The Law Society has 'looked to raise the general standard of LPC applicant to the extent that graduates numbers declined, but without detriment to meritorious applicants of all backgrounds and without stifling healthy

competition for training contracts' and as a result also commissioned a research report, by Helen Baron, to investigate the viability of introducing an aptitude test for entry to the LPC. (<http://www.lawsociety.org.uk/new/documents/careers/aptitudetestreport.pdf>). The report concluded that a successful aptitude test would only remove those who were likely to fail the course, thereby improving the quality of the candidate on the course. In this way they agreed that 'the aims set out in the BSB's consultation may be achieved by the introduction of the BCAT'. However, the Law Society concluded that aptitude testing would have little effect on the number of students graduating from the course and competing for training contracts, or in this case, pupillages [sic]. It would not ensure that those who passed the course were of the standard required to get accepted onto the next stage in order to qualify and the Society felt that this was the real issue that needed addressing. The Law Society aim to feed the findings of their report into the current Legal Education and Training Review's (LETR) as 'it was felt that the evidence presented in the report confirms that a full examination of the current vocational stage is essential'. They suggested that the BSB may wish to consider 'whether the timing of this consultation and the introduction of the BCAT is appropriate with the LETR ongoing, which will most likely alter the landscape of education and training.'

There are no recommendations from this section. The BSB does not wish postpone the further specification of entry requirements for the Bar Course due to the possibility of changes emanating from the LETR. This will take some time and it was agreed by the three regulators, and the LSB, that the LETR should not delay ongoing work.

6 Conclusions and future actions

- 6.1 The consultation proved extremely helpful to the BSB in determining the next steps following the Review of the Bar Course by the Working Group. The BPTC Subcommittee is tasked with the implementation of that review, to which it is taking a careful and measured approach.

Overall therefore, in conclusion, there was significant consensus that the introduction of the BCAT is necessary, as indicated by the data available. It acts as the most effective single indicator of success on the course and does not significantly discriminate against any particular group.

On the other hand, there was marked disagreement about the number of resits opportunities that should be available, so further consideration will be given to the revision of this approach by the Education & Training Committee of the BSB.

- 6.2 Following the reporting process to the BSB, when final decisions on all recommendations will be made, the BPTC subcommittee will need to oversee:

- the operational issues
- the process for any necessary approval of changes in the BTRs and/or Code of Conduct (ie drafting of any new rules).
- the development of a full Risk Assessment in relation to the new system as modified
- the finalisation of the Equality Impact Assessment in relation to issues identified in relation to the new system as modified
- a full financial analysis and forecasting in relation to the new system as modified
- the schedule and method of oversight for the implementation the new requirement (and further review as appropriate)
- the obtaining of any necessary permissions (for example from the LSB) in relation to the new requirement

It is anticipated that, after due consideration of the above recommendations of the E&T by the BSB, a formal submission to the Legal Services Board, will be necessary.

VS/7 March 2012

Appendix A

Consultation questions

- 1 Do you consider that current entry requirements on the BPTC need to be changed?
- 2 Do you agree with the rationale for implementing an additional entry requirement for the BPTC in the form of a universal Aptitude Test (BCAT)?
- 3 Do you consider that the introduction of the BCAT is justified by the data presented in this report?
- 4 After looking at the results of the pilot tests, do you consider that the BCAT will reliably identify students who are likely to fail the BPTC?
- 5 From looking at the evidence in this report, what cut score would you consider to be most appropriate?
- 6 Do you agree that an unlimited number of re sats for the BCAT should be available (subject to anti-fraud frequency monitoring)? If not, how many do you consider to be appropriate?
- 7 After looking at the results of the pilot tests, do you consider that the introduction of the proposed BCAT would have a disproportionate effect (either positive or negative) on any particular group compared with others?
- 8 Are there any negative impacts that have not been identified in the equality impact assessment?
- 9 Do you consider that entry standards on the BPTC could be made more rigorous in a way other than what is suggested in this paper? If yes, please expand.
- 10 Please insert any other comments on this consultation document here.

Appendix B List of respondents

Inns of Court and COIC

Lincoln's Inn
Inner Temple Middle Temple
Grays Inn
Advocacy Training Council

Specialist Bar Associations

BACFI

Professional and Regulatory Bodies

Law Society

Committees of Bar Council and BSB

Training for the Bar Committee

BPTC Provider

City University

Individuals

Recent or current students who prefer not to be named
BPTC External Examiner

Commercial organisations

Clear Thinking Clear profit (UK based consultancy)