



REGULATING BARRISTERS

## **Education & Training Committee**

### **Report and Recommendations of the BTT Working Group**

#### **Context**

1. The Bar Transfer Test (previously known as the Bar Aptitude Test to 2008) is a test that has to be successfully undertaken by Qualified Lawyers (solicitors and overseas lawyers) intending to transfer to practise at the Bar of England and Wales. Requirements and guidance are specified by the BSB in line with the Bar Training Regulations. The Test is currently franchised to BPP (since 2001) who run it twice a year (April and September) on behalf of the BSB.
2. Applications to take the test are managed by the BSB Qualifications Committee who may grant exemptions to some or all parts of the BTT. The Committee considers applications for exemptions from the standard requirements for qualification as a barrister, which may be granted conditional upon passing some or all parts of the BTT.

#### **Review of the Bar Transfer Test**

3. As agreed at the September 2011 meeting of the Education & Training Committee, a Working Group was set up to carry out an in depth review of the Bar Transfer Test (BTT). A Review of the basic content of the Test was carried out in 2008-09.
4. The Working Group was Chaired by Professor Dawn Oliver and met monthly January – May 2012 (total 5 meetings). The Terms of Reference and membership of the Group are included as Appendix A to this document.

#### **Issues addressed by the Working Group**

5. As part of the investigation, the Working Group examined the areas highlighted in the terms of reference, as follows:

*Regulatory aspects*

6. The regulatory framework for the BTT was considered in terms of the role of the BSB as regulator of Education and Training for the Bar of England and Wales, with consideration also given to the requirements of the Legal Services Act 2007 (the Regulatory Objectives) and the role of the Legal Services Board. Extensive consideration was given in particular to the need to clarify the regulations and distinguish between regulations and guidance.
  7. Special attention was given to eligibility to take the BTT and the granting of exemptions – processes that are managed by the Qualifications Committee, who also had input into the review.
  8. English language skills for the Bar Transfer Test in line with requirements for the BPTC were also considered in detail, as well as the possible future use of the Bar Course Aptitude Test (BCAT) if and when approved and in place.
  9. It was agreed by the Working Group that actual regulations should be presented as a distinct and separate section, with the content, teaching and assessment also in a specific section, while guidance and quality assurance matters should also be grouped together. This led to the conclusion that the handbook needed a complete rewrite, and should in fact be brought securely into line with the 'Blue Book' for the BPTC and presented as a BSB Handbook, rather than a joint publication with the Provider(s). (This work was in fact carried out in parallel to the Working Group discussions).
- R1 The regulations pertaining to the BTT must be clarified and clearly presented in a completely revised version of the BTT Handbook, suitably brought into line with other BSB Handbooks, such as the 'Blue Book' for the BPTC.**
- R2 Information should also be provided about the regulatory context for the BTT, so as to make this clear to candidates.**
- R3 The process of assessment of applications and exemptions through the Qualifications Committee should continue in its present form.**
- R4 Since Requests for Review will need to be dealt with in Committee (prior to and requests made to the Review Board) this task should be allocated to the BPTC subcommittee which should have its Terms of Reference adjusted accordingly, with renaming as the BPTC and BTT subcommittee.**
- R5 Requirements and guidance on the level of English language skills necessary must be emphasised in regulations and guidance for candidates.**
- R6 The Bar Course Aptitude Test (BCAT) if and when approved and in place should not be a requirement for taking the BTT.**

*Content*

10. The sections of the BTT relate:
    - a. to the content of the Qualifying Law Degree (QLD) or Conversions courses (CPE/GDL) at undergraduate level
    - b. to the content of the Bar Professional Training Course (BPTC)
  11. Clearly any person wishing to practice at the Bar of England and Wales must have met requirements in all areas covered by the QLD/CPE and the BPTC, as well as the need for fluency in the English Language. At least some exemptions are generally granted to transferring qualified lawyers (whether solicitors or overseas lawyers).
  12. Discussion mainly related to the organisation of the sections and the way they are assessed. The current system combines different sections for examination, sometimes in a rather 'ad hoc' way, and it was agreed that it would be preferable to separate out the various sections and tie them more closely to the equivalents, as above. There was only limited discussion of content, since it was agreed that in all sections this should be in line with, if not identical to, the related courses of the QLD/CPE and the BPTC. BTT candidates should not be required to undertake optional subjects (eg family law, company law) as part of the test.
- R7 The content of the BTT sections (individually and collectively) is appropriate but should be better presented in the Handbook, to make it clear which relate to the QLD/CPE stage and which to the BPTC.**

*Teaching*

13. With regard to teaching (required only for Advocacy which includes a compulsory course), it was agreed that the basic system should currently remain – ie that no teaching was required other than in advocacy since candidates would be assessed only, their knowledge and skills having largely been obtained through experience and practice and/or through their own studies in preparation for the BTT. Exemptions would be given, as mentioned, where knowledge and skills were fully demonstrated to the Qualifications Committee (basically as a form of ‘accredited prior experiential learning’). A great deal of discussion took place on whether it was appropriate for the same provider to deliver the taught course (on Advocacy) as well as to assess the same candidates. It was thought that the numbers involved might make the separation of roles in this way impractical. A compromise was sought by not permitting individuals who taught candidates for advocacy to assess those candidates.
  14. Resources and facilities available (staffing and material resources) needed to support candidates were considered by the Working Group, mainly in terms of library and examination facilities, since there is only one short taught course (proper facilities for which must however be in place).
- R8 Since candidates are qualified lawyers, the only compulsory taught course should be Advocacy which should remain in its present format. Individuals teaching on the course must not be responsible for assessing the same candidates.**
- R9 Resources and facilities available for examinations and the Advocacy taught course must meet BSB specifications (as appropriate, in accordance with the Blue Book).**

Assessment

15. The assessment of candidates was also much discussed. Given the need for clarity, this is now presented in the new draft Handbook in the form of a table (as for the BPTC). Level descriptors and standards also needed to be drawn to the attention of candidates more clearly. Assessment Regulations were extensively discussed with clarification to be provided where necessary. Pass marks for each section were discussed at length and it was agreed that sections relating to the QLD/CPE should have a pass mark of 40% in line with the QLD/CPE (but with an additional requirement for written skills with a pass mark of 60%). All foundation of legal knowledge subjects should be assessed by single subject, two-hour examinations with a pass mark of 40% for content but with a pass mark of 60% for written skills, also assessed for each paper. Sections relating to the BPTC should have a pass mark of 60%, as for the BPTC.
  16. It was also discussed whether, as part of the move to align the BTT much more with the BPTC, the existence and operation of centralised examinations in Civil Litigation, Criminal Litigation and Ethics should be utilised. Centralised examinations are now in place (from March/April 2012) for the first time, with resits in late August. This is basically in line with the current timing of the two sittings of the BTT and was strongly supported by the Working Group. However, there could be operational difficulties because the Centralised Examination Board does not meet until June (for April sittings) and September (for August sittings) which would mean delay for BTT candidates awaiting their results.
  17. The frequency of 'sittings' of the BTT, currently twice yearly was considered but, in spite of rising numbers it was generally felt that this should remain as is for the time being, even if timings varied (ie with centralised examinations).
  18. The number of resits permitted was also reconsidered carefully by the Group. At present candidates must take all sections as required by the Qualifications Committee. If any is failed, then that section may be retaken to obtain a pass. If on second attempt the section is still not passed then all required sections must be taken again at one sitting and passed. No further resits are allowed after this. This means of course that at present no candidate may ever attempt the Test again, even after many more years may be spent as a qualified lawyer. [NB prior to 2009, all required sections always had to be passed at one go.]
- R10 The assessment requirements and pass marks for separate components (confirmed as 40% for substance and 60% for written skills in the QLD/CPE subjects and 60% for BPTC subjects) must be clearly presented to students.**
- R11 The frequency of 'sittings' of the BTT should remain as twice yearly but the Centralised Examinations in Civil Litigation, Criminal Litigation and Ethics should be utilised as for the BPTC (even though this may mean that candidates have to wait longer for their results).**
- R12 The number and system of resits permitted should remain as at present. However, it is recommended that after a lapse of two years, a candidate may apply to the Qualifications Committee to start the process again ab initio.**

*Numbers of candidates (statistical information)*

19. A significant amount of work was carried out on statistical information relating to candidates, including types of applicants, pass rates etc (see Appendix B for brief summary). It was noted that the number of applicants is rising, both for solicitor applicants and those from overseas jurisdictions. Unlike in the past where arrangements for pupillage needed to be secured prior to taking the Test, the fact that this is not now required has led to a steady increase in numbers.
  20. The aim and purpose of the BTT is to test applicants for their suitability for practise at the Bar of England and Wales. There appear to be some candidates who wish to undertake the BTT to bolster their qualifications, and hence, they believe, their practice, overseas. Clearly it would not be appropriate to judge these applicants differently from those who intend to practise at the Bar of England and Wales. A question arises whether it would be workable to deter applicants from taking the test only to bolster their practice overseas by requiring candidates to undertake that they intend to practise at the Bar of England and Wales, so consultation is necessary on any proposal in this area.
- R13 A new requirement should be introduced that an intention to practise at the Bar of England and Wales must be demonstrated on application to the Qualifications Committee. However, it is not at present recommended that the BTT should be open only to those who have pupillage.**

*Advice and support for candidates*

21. The Working Group agreed that more guidance and advice for students could be helpful and that existing material should be drawn together in one place.

**R14 Guidance for candidates should be clarified in a separate section of the BTT Handbook.**

*Inns Matters*

22. The Inns of Court were consulted as appropriate during the Review. Further consultation will also take place on the specific recommendations and revised materials. In particular, discussion took place concerning the point at which membership of an Inn should be sought or obtained and whether this should be prior to taking the Test (in order to be ready for Call ceremony after passing) or only once the Test is passed (to save processing and admitting large numbers of new members unnecessarily).
23. Another, related, issue was Inns' Qualifying Sessions. At present, BTT candidates are required to undertake Qualifying Sessions after Call, but many do not complete them. This indicates either a need to make them a requirement prior to Call, or to discontinue the requirement. The Inns have emphasised the importance of Qualifying Sessions in developing the knowledge and skills required to practise at the bar, not only in terms of advocacy skills and legal knowledge but also professional conduct. Completion of Qualifying Sessions is also an integral element of the process of call to the Bar. Consequently, the Working Group, taking advice from the Inns, favoured the former, that is that candidates should be required to complete the Qualifying sessions prior to Call to the bar and that the option to join an Inn prior to taking the BTT remain open to facilitate completion of Qualifying sessions.
- R15 Candidates may apply for Inn membership prior to taking the BTT or once they have successfully passed the BTT. They must have joined an Inn in order to apply for call to the Bar.**
- R16 Candidates must complete the required number of Inns Qualifying Sessions prior to Call to the Bar.**

*Operational issues and appointment of Provider(s)*

24. The appropriate number of Provider(s) of the BTT was keenly discussed, in particular whether there should be a single or multiple Providers, whether it was appropriate to approve all Providers able to demonstrate that they could run the BTT, or select and appoint only the most suitable. Open competition and an open and transparent retendering process would indicate that this was not the allocation of a 'monopoly' for the provision. Current numbers indicate that more than one provider might not be viable, since provision of the Test might not be cost effective for multiple providers.
25. There was also discussion on whether there should be separate Providers for the delivery of the taught course, advice and support and for assessment. Again, the scale of the operation is an issue here, which would always need to be kept under review.
- R17 A retendering process for delivery of the BTT and associated compulsory course should be instigated, with invitations to tender during summer 2012, with a view to commencement of the new Test from January 2013. If this is not possible due to the time needed, including consultation, possible LSB approval etc, then September 2013 or January 2014 should be the proposed start time for the revised arrangements.**
- R18 Retendering should lead to the appointment of the single most suitable provider, rather than allowing for a number of providers who meet requirements to share the pool of candidates. Apart from general viability, due to the current low number of candidates, multiple Providers would prove complex in terms of assuring consistency in standards and continuity through the operations of different examination boards.**

*Quality Assurance issues*

26. Better Annual Monitoring processes for the BTT (by the Provider) appear necessary, including detailed reporting to the BSB with analysis of the profile of candidates and their success and progression rates etc. Monitoring visits may be appropriate.
  27. There is room for improvement in the current operation of Examination Boards including the presentation of data, and the role of External Examiners. Their contractual obligations and payments, and the appointment process for examiners also need to be formalised.
- R19 The standard of annual monitoring reporting should be improved as well as examination board operations and data and the various procedures relating to External Examiners. Requirements should be specified in the new Handbook.**

*Reviews and appeals*

28. The area of reviews and appeals was one to which a great deal of time of the Working Group was devoted. The number of appeals from candidates failing the BTT is increasing, which means that the current system of convening a special very high level panel is becoming completely unwieldy and actually inappropriate in terms of the seniority of the panel and time spent. It was agreed that this part of the process should be overhauled with a system put in place to filter appeals (more properly termed 'requests for review') through the provider and BPTC subcommittee before being considered (only exceptionally) by a specially appointed Review Board.

**R20 Procedures for appeals should be renamed 'Requests for Review'. These should be dealt with initially at Provider level, then by the BPTC/BTT subcommittee (which should have the authority to deal with queries about individual assessments) and only by a specially convened Review Board where the issue concerns performance on the course as a whole and where the BPTC/BTT subcommittee has determined there is a prima facie for the Review Board to do so.**

*Management and financial considerations*

- 29. The Group agreed that the lack of a proper contract between the BSB and the Provider is an issue that needs to be addressed.
- 30. The Group considered in detail the arguments surrounding the need for a re-tendering process for delivery of the Test, possibly leading to one or more Provider of the BTT.
- R21 A proper contract between the BSB and the Provider must be devised for the delivery of the Test in its new, revised form.**

## **Executive summary (compilation of Findings and Recommendations of the BTT Steering Group)**

### *Regulatory aspects*

- R1 The regulations pertaining to the BTT must be clarified and clearly presented in a completely revised version of the BTT Handbook, suitably brought into line with other BSB Handbooks, such as the 'Blue Book' for the BPTC.
- R2 Information should also be provided about the regulatory context for the BTT, so as to make this clear to candidates.
- R3 The process of assessment of applications and exemptions through the Qualifications Committee should continue in its present form.
- R4 Since Requests for Review will need to be dealt with in Committee (prior to and requests made to the Review Board) this task should be allocated to the BPTC subcommittee which should have its Terms of Reference adjusted accordingly, with renaming as the BPTC and BTT subcommittee.
- R5 Requirements and guidance on the level of English language skills necessary must be emphasised in regulations and guidance for candidates.
- R6 The Bar Course Aptitude Test (BCAT) if and when approved and in place should not be a requirement for taking the BTT.

### *Content*

- R7 The content of the BTT sections (individually and collectively) is appropriate but should be better presented in the Handbook, to make it clear which relate to the QLD/CPE stage and which to the BPTC.

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- R8 Since candidates are qualified lawyers, the only compulsory taught course should be Advocacy which should remain in its present format. Individuals teaching on the course must not be responsible for assessing the same candidates.
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- R10 The assessment requirements and pass marks for separate components (confirmed as 40% for substance and 60% for written skills in the QLD/CPE subjects and 60% for BPTC subjects) must be clearly presented to students.
- R11 The frequency of 'sittings' of the BTT should remain as twice yearly but the Centralised Examinations in Civil Litigation, Criminal Litigation and Ethics should be utilised as for the BPTC (even though this may mean that candidates have to wait longer for their results).
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*Operational issues and appointment of Provider(s)*

- R17 A retendering process for delivery of the BTT and associated compulsory course should be instigated, with invitations to tender during summer 2012, with a view to commencement of the new Test from January 2013. If this is not possible due to the time needed, including consultation, possible LSB approval etc, then September 2013 or January 2014 should be the proposed start time for the revised arrangements.
- R18 Retendering should lead to the appointment of the single most suitable provider, rather than allowing for a number of providers who meet requirements to share the pool of candidates. Apart from general viability, due to the current low number of candidates, multiple Providers would prove complex in terms of assuring consistency in standards and continuity through the operations of different examination boards.

*Quality Assurance issues*

- R19 The standard of annual monitoring reporting should be improved as well as examination board operations and data and the various procedures relating to External Examiners. Requirements should be specified in the new Handbook.

*Reviews and appeals*

- R20 Procedures for appeals should be renamed 'Requests for Review'. These should be dealt with initially at Provider level, then by the BPTC/BTT committee (which should have the authority to deal with queries about individual assessments) and only by a specially convened Review Board where the issue concerns performance on the course as a whole and where the BPTC/BTT subcommittee has determined there is a prima facie for the Review Board to do so.

*Management and financial considerations*

- R21 A proper contract between the BSB and the Provider must be devised for the delivery of the Test in its new, revised form.

## Handbook

A revised draft Handbook has already been completed, incorporating all the above recommendations, and is attached to this report.

## Conclusions and next steps

Following approval by the BPTC subcommittee and the Education & Training Committee, the report, recommendations and revised BTT Handbook must be circulated to interested parties for detailed consideration, including the Qualifications and other Committees of the BSB, The Inns of Court, current BTT external examiners, members of BTT review board(s), members of the JASB, and the BPTC Providers.

Once responses to the consultation have been taken on board, then the retendering and revised delivery process should be put in place according to the draft timetable below

28 May 2012	Last meeting of BTT Working Group and approval of final documentation
Jun 2012	Approval by BPTC subcommittee and Education & Training Committee (by email)
Mid June – end Aug	Consultation period
Aug – Sept 12	Application for exemption to LSB
Sept 12	Finalisation and Invitation to tender [and drafting of contract]
Nov 2012	Receipt of formal tenders [finalisation of contract]
Dec 2012	Selection of Provider for January or April 13 start [with new contract]

The above will need to be adjusted following consultation, and depending on the need for BSB and LSB approval etc

VS/First draft 13 April 2012, amended 17 April, 25 April, 6 May, 17 May, 30 May



## Bar Transfer Test Review: Terms of Reference

<b>Terms of reference for</b>	<b>BTT Review Steering Group</b>
<b>Rationale/Description</b>	<p>The BTT Steering Group is set up to:</p> <ul style="list-style-type: none"> <li>• carry out a Review of the Bar Transfer Test (previously known as the Bar Aptitude Test to 2008) that has to be successfully undertaken by Qualified Lawyers intending to transfer to practise at the Bar of England and Wales, and</li> <li>• make recommendations concerning the test, specifying any further steps necessary, such as a (re)tendering process</li> </ul>
<b>Functions/ responsibilities</b>	<p>The key issues to be addressed in the BTT Review will be:</p> <p><b>Regulatory aspects</b></p> <ol style="list-style-type: none"> <li>1. The regulatory framework for the BTT (including the assessment regulations, and eligibility for retake/resits)</li> <li>2. Entry requirements (eligibility) for the BTT (Currently, anyone is eligible to take the Test whom the Qualifications Committee have required to take it as a condition of exempting them from the Academic and/or Vocational stages of training under Part VII of the Bar Training Regulations. This currently works well but it is good practice to consider and/or reaffirm the role of the Qualifications Committee here)</li> <li>3. Possible English language requirements or the Bar Transfer Test (in line with use for the BPTC)</li> <li>4. Possible use of the Aptitude test, as for the BPTC)</li> </ol> <p><b>Content and delivery</b></p> <ol style="list-style-type: none"> <li>5. Content of the BTT course units and alignment with the BPTC (content and level descriptors)</li> <li>6. Teaching, learning and support for candidates</li> </ol> <p><b>Operational issues</b></p> <ol style="list-style-type: none"> <li>7. Frequency of 'sittings' of the BTT (currently twice yearly)</li> <li>8. Analysis of candidate success and progression rates</li> <li>9. Standards and the involvement of BSB appointed examiners – their contractual obligation and payment; the appointment process for examiners also needs to be formalised</li> </ol>

10. Resources and facilities (staffing and material resources) needed to support candidates

**Quality Assurance issues**

11. Quality Assurance of the Test and the management of Examination Boards
12. Arrangements for monitoring visits and Annual Monitoring processes
13. Consideration of the legal obligation to have a BTT in accordance with EU legislation (the Professional Qualifications Directive, Directive 2005/36/EC, implemented in the UK by the European Communities (Recognition of Professional Qualifications) Regulations 2007), which requires us to have a test for lawyers qualified in other EU member states who wish to qualify as barristers

**Management and financial considerations**

14. Consideration of the need to undertake a retendering process, possibly leading to one or more Provider of the BTT
15. Overseeing the implementation of all other recommendations of the review, including any revisions to the framework and guidance and any (re)tendering process and contractual issues

*Note:* Requirements and guidance are specified in the Bar Transfer Test (BTT) Handbook (<http://www.bpplawschool.com/BarAptitudeTest.htm>) and apply only to qualified lawyers from other jurisdictions and solicitors who wish to qualify to practise at the Bar of England and Wales (eg European Union Lawyers, Solicitors admitted in England and Wales or Northern Ireland, Northern Ireland Barristers etc).

<b>Schedule of meetings</b>	<p>Anticipated to be 3-4 meetings between December 2011 and April 2012, with additional meetings to finalise the requirements and Guidance for the BTT as needed.</p> <p>Further meetings and/or email discussion may be necessary post April 2012 [now 'post May'], depending on the findings of the review and any need to consider a tendering process for delivery of the BTT.</p>
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<b>Quorum</b>	50%
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<b>Membership (principles)</b>	<p>The membership of the BTT Working Group shall include:</p> <p>Barrister and lay members of the Education &amp; Training, and Qualifications Committees  A member of the BTT Examination Board  A member of the BTT Review Board  Relevant members of the BSB Secretariat responsible for operational matters related to the BTT</p> <p><i>Consultation with other groups and interested parties will take place as appropriate</i></p>
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<b>Chair and date of appointment</b>	TBC
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<b>Members</b>	<p>David Fleming  Nerys Jefford  Dawn Oliver (Chair)  Christopher Pitchers</p> <p>Ruth Sutton  Valerie Shrimplin  Stuart Weinstein  As necessary</p>	<p>Lay Academic, E&amp;T  Barrister Member of E&amp;T  Member BTT Review Board  BSB/BPTC External Examiner and Moderator  Member BTT Exam Board  Head of Education Standards  Lay Academic, E&amp;T  Member of Qualifications Committee</p>
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<b>Working Group Secretary</b>	Lucy Russell/Sophie Maddison (and Valerie Shrimplin)
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<b>Others to be kept informed via minutes, agendas and papers</b>	<p>Chair of the BSB  Director of the BSB</p>
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<b>Reporting to</b>	Bar Standards Board (Education & Training Committee to be kept informed. Report to BSB)
<b>Date of approval of draft ToR by E &amp; T Committee</b>	November 2011
<b>Date of approval of final terms and membership by BSB</b>	By Chair's action, in discussion with Director of BSB and Chair of Education & Training

VS/as approved, 21 November 2011