



Bernard Richmond QC

11 September 2020

Dear Bernard

Response to Bar Proposal

The full Board of the Bar Standards Board met on Wednesday 2 September and on 10 September to discuss, amongst other things, your proposal for the delivery of centralised assessments in the Autumn. The Board expressed their gratitude for the careful and considered nature of your proposal and for your willingness to try to find a solution that serves the interests of the students affected by the August exams as well as the wider interests of the barrister profession.

Alongside your proposal, the Board also considered other possible approaches including waiving the centralised assessments altogether, moving to an uninvigilated open book approach and a traditional pen and paper assessment delivered by the BPTC Providers. The Board, when considering your and other proposals, had in mind its responsibilities as a regulator in the public interest to ensure that any approach to centralised assessment should be rigorous, practicable and supporting of our commitment to maintaining the standards of practice at the Bar. It was also mindful of the need to enable as many students as possible to move on to the next stages of their career whilst ensuring that any assessment was fair, consistent and non-discriminatory.

The Board decided against waiving the centralised assessments for the reasons that we outlined to you at the meeting. A waiver would not be compatible with our commitments to maintaining standards at the Bar for the reasons that I outlined when we met in August. The Board also discounted uninvigilated open book assessment for the current assessments. The BPTC is a high stakes professional qualification and any form of uninvigilated assessment risks the integrity and rigour of the assessment. It would not be possible to confirm the identity of the person completing their test or guard against collusion. The current exam papers comprise questions designed for closed book assessment and would need extensive re-writing and a revised approach to standard setting (which will have been completed on the basis not only of closed book but also the basis of candidates not having access to any other resources). It is likely therefore that the pass standard would need to rise dramatically to ensure rigour. Lastly, it would denude our question banks and we would need to resource and fund building up those banks for the next assessment opportunity. Logistically, finding sufficient question writers and completing all of the other steps to settle exam questions and replenish the question banks in time would be impossible. It is important though to understand that the BSB is not against open book assessments generally – indeed, one of the new civil litigation paper

under Future Bar Training and the professional ethics in pupillage assessment will be open book. It is an *uninvigilated* open book approach that we believe compromises the integrity of the centralised assessments.

When considering the specifics of your proposal, the Board focussed its attention on the following aspects:

- the ability of the proposal demonstrably to cover the breadth of the civil litigation, criminal litigation and professional ethics syllabi
- whether the proposal satisfies the BSB's public sector equality duty responsibilities
- the status of the assessment and its relationship to the validated awards offered by the BPTC Providers

It was not evident to the Board from your proposal how it would cover the full scope of the syllabi for professional ethics, criminal litigation and civil litigation. In order to cover the syllabus and ensure reliability of results the BSB currently ask candidates 75 questions in each litigation subject and apply rigorous statistical analysis to the responses. It was unclear to the Board how your proposal would meet those requirements. Similarly, the Board had concerns about your proposal for a 60% pass mark for the assessments. The BSB explicitly moved away from this in favour of standard setting in 2017. It was not clear from your proposal how you would maintain a consistent level of challenge across all assessment seminars or how collusion between candidates would be prevented if they are all asked the same questions. The Board therefore felt that a traditional pen and paper assessment would be the most effective way of assessing candidates across the full breadth of the syllabus.

The Board is of the view that pen and paper sat assessments are not discriminatory and satisfy therefore our equality duties. We noted your views on this in your proposal and that you saw your approach as being a better means of discharging those duties. The Board however was concerned about the potential equality duties issues arising from a face to face assessment where candidates are put on the spot in front of their peers to answer questions from senior members of the Bar. There was no reference in your proposal to how those risks would be overcome or whether, for example, all assessors would have undergone appropriate training, including unconscious bias.

For your proposal to form part of the validated awards offered by the BPTC Providers it would need to be approved by them in advance. Your proposal does not address what is required to conform with validated learning outcomes, course specifications or M level requirements. Without this validation, candidates will not be able to be awarded the PG Dips and LL.Ms.. Furthermore, under the Future Bar Training reforms approved by the BSB Board, only an Authorised Education and Training Provider ('AETO') can provide training for the Bar Course. As the Board understood it, there is no AETO involved in the Bar Proposal, nor any University or organisation that might be capable of being authorised. Instead, the Proposal would be delivered by volunteer members of the Bar. The results of the assessments would therefore have no formal standing or status and could not therefore be included within the formal governance framework in place to support and oversee the centralised examinations.

Turning lastly to the issue of practicability. It is important to understand the potential scale of any Autumn assessment opportunity. Approximately 2200 students were due to sit the August assessments. Statistics on the number of students who successfully completed the assessments are being extracted from the Pearson VUE system. Although we were initially assured by Pearson VUE at a senior level that the completion rate at the beginning

of the assessments was as high as 97%, the initial findings at the conclusion of the three assessment windows, suggest only a majority were able to complete the assessments. Of those, there will be a number who believe that their performance was affected by the challenges they faced in accessing and completing the assessments. We believe therefore that the Autumn assessment should be available to any student who wishes to take them with their best mark from the August or Autumn sit being taken. This therefore opens the possibility of all, or at least a significant proportion, of the 2200 students wishing to retake the assessment. For the purposes of our planning we are assuming that around 1600 students will want to sit assessments in the Autumn. Any approach that we adopt for those assessments must therefore be capable of meeting that demand.

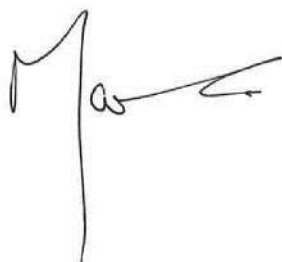
Putting to one side for a moment the merits of your proposal and acknowledging that it was formulated at a time when we all hoped that the number of students needing a further opportunity to be assessed for these subjects would be lower, it is difficult to see that it is capable of being scaled to deal with up to 1600 students over the short time frame that we are working to, whilst meeting requirements of rigour and integrity. The Bar Proposal envisages groups of 8 students attending for 2.5/3 hours per assessment. That roughly equates to 200 assessment sessions for each of Criminal and Civil litigation – each with 2 assessors. That is up to 1200 hours of examinations – 2400 assessor hours just in terms of physical attendance. Add to that the working hours to create materials, moderate results, review real time video, check results, deal with appeals and complaints. The Board were very conscious that this would involve an enormous commitment of time from a profession which is already under severe pressure as a result of the current health emergency. Your proposal provided no information about costs or plans for delivery or how you would ensure that you had access to enough assessors to meet the demand for the October assessments. The Board was therefore concerned that your proposal would be impractical to deliver, particularly at any scale. Related to that concern is how your proposal accommodates candidates, of which there are many, who are not sitting all of their centralised assessments because they have already completed one or more of the assessments or have yet to sit them because they are on a part time course. It would clearly be unfair to re-assess students who have already completed successfully professional ethics because it was intrinsically linked to the assessment of civil or criminal litigation. Similarly, it would be unreasonable to assess a student in civil litigation ahead of their scheduled time for assessment because you could not decouple the consideration of that subject from the assessment of the other centralised assessments. The Board saw the practicality of your Proposal as a major barrier to its implementation.

Having considered all the available options and having regard to both its equalities duties and the logistics and timeframe involved in delivering exams in October, the Board has now concluded that a pen and paper sat assessment is the option that best suited its responsibilities. We believe that it is a proportionate means to meet our legitimate aims to enable students who experienced difficulties (technical or other) in completing their assessments in August or who feel that their performance suffered as a result of these difficulties to sit the centralised examinations as soon as possible; to enable those candidates to progress to the next stages of their career without further delay (and in particular, to enable those candidates with pupillage starting in the Autumn to complete the BPTC and receive their results before they start the practising period of pupillage); and to ensure that the approach to assessment is rigorous, inclusive and non-discriminatory.

We have held positive discussions with Providers about their ability to deliver these assessments to all candidates who wish to sit them, and plans are in train. Providers will be in contact with their students today to provide them with the necessary information to register for the October assessments.

The Board is very grateful to the considerable effort you have put in to develop your proposal over a short period of time. Your proposal raises interesting ideas that we will continue to reflect on as we move forward with the future development of the centralised assessments. In particular, we are clear that we need to work with Providers to find, in the medium to long term, a computer based means of assessment that is reliable, flexible and rigorous. For these assessments, we believe a pen and paper sat exam is the best way of enabling as many students as possible to complete their assessments, whilst meeting the aims for these assessments that we set as a regulator. Attached for information is the press notice that we have just released which announces that decision.

Your sincerely

A handwritten signature in black ink, appearing to read 'Mark Neale'. The signature is stylized, with a large 'M' and a long horizontal stroke extending to the right.

Mark Neale
Director General