

BAR
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Review of the Bar Transfer Test

Consultation Paper on the proposed new system for the
BTT

BAR STANDARDS BOARD

REVIEW OF THE BAR TRANSFER TEST (BTT)

CONSULTATION PAPER ON THE PROPOSED NEW MODEL FOR THE BTT

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Part 1: INTRODUCTION

Review of the Bar Transfer Test

1. The Bar Standards Board ('the BSB'), the independent regulatory arm of the Bar Council, has carried out a systematic review of all stages of education and training for the Bar (2007-11). A review of the Bar Transfer Test for transferring solicitors or lawyers from other jurisdictions wishing to practise at the Bar of England and Wales has also taken place through the BSB Education & Training Committee. A Working Group was set up, meeting monthly January – May 2012.
2. The Report of the Working Group (which includes the Terms of Reference of the group) is attached as Appendix A. A draft revised handbook is attached as Appendix B. Information is provided in this paper about the Review and the findings and recommendations of the group. Some specific consultation questions are posed, derived from the recommendations made by the Working Group, and accepted in principle by the Education and Training Committee and the Bar Professional Training course subcommittee of the BSB following the final meeting of the group on 28 May 2012.
3. The attached report (Appendix A) gives an overview of the issues addressed and recommendations for revision of the BTT and delivery of the test including assessment. A new draft Handbook (Appendix B) includes information about the Quality Assurance procedures and guidance for a retendering process. Some statistical information is included at Appendix C and the associated Equality Impact Assessment (Appendix D).

Responses to this Consultation paper

4. Responses are welcome from all those who may have views or evidence relating to the issues raised in this paper. It would be helpful if responses could be fully presented with detailed reasons given for comments, as well as any underlying evidence.
5. The BSB will summarise the responses received and will normally publish responses on its website. If you do not wish your response to be published, please make that clear in your response.
6. Responses should be submitted by 31 August 2012 and should be sent to:

Bar Transfer Test Consultation
Bar Standards Board
289-293 High Holborn
London WC1V 7HZ

or by email to: smaddison@barstandardsboard.org.uk

Part 2 OVERVIEW

Rationale for the review

7. A review of the content of the BTT took place in 2008 but the need to review also the overarching structure, management and operational issues was identified, as well as the need to reconsider the manner in which the test is made available to prospective candidates and they are assessed. The current system for the BTT was examined in depth by a specially appointed Working Group, Chaired by Professor Dawn Oliver and including practising barristers, a member of the judiciary, legal academics, examiners of the BTT and a member of the BTT Review Board. Consultation took place during the review with the Qualifications Committee, the existing Provider and the Inns of Court.

Recommendations for amendments and improvements

8. The main issues regarding the current system were lack of clarity in the way the syllabus was laid out and how candidates were informed of the areas on which they were to be tested, and the appeal or review processes for candidates. The changes recommended are basically to the way in which the syllabus is defined, specifying much more clearly the relationship with the Academic Stage of Training (law degree or conversion course) and with the Bar Professional Training Course. Full details are provided in the attached report and handbook. It is essential that candidates transferring to the Bar demonstrate that they have attained the same standard as those who are Called to the Bar of England and Wales by means of more traditional routes.
9. The Working Group concluded that a significant overhaul of the way the Test is presented was necessary, although there is very little change to the syllabus itself. The focus is rather on clarification. The requirements for a transferring solicitor or overseas lawyer to have demonstrated equivalence to the Qualifying law Degree (QLD) or Common Professional Examination (CPE) and the Bar Professional Training Course (BPTC) remain the same. The difference is in the way the method of achieving this has now been more clearly specified.
10. The main recommendations (as covered by the formal consultation questions) are:
 - That the regulations and curriculum must be more clearly presented and brought closely into line with requirements for the QLD/CPE and BPTC (see draft handbook)
 - That the task of overseeing the BTT should be formally allocated to the BPTC subcommittee (possibly with a change of name for that subcommittee)
 - That guidance on the level of the English language skills necessary for practise at the Bar of England and Wales should be emphasised for candidates, but the Bar Course Aptitude Test (BCAT) if and when approved should not be a requirement
 - That the only compulsory taught course should be Advocacy
 - That the assessment regulations should be made clearer, including a rule that once all resits have been exhausted, there should be a further opportunity for a candidate to apply after a lapse of two years to start the process again *ab*

initio.

- That it should be seriously considered whether a declaration of intention to practise at the Bar of England and Wales must be demonstrated on application to the Qualifications Committee.
- That candidates must have completed the required number of Inns' Qualifying Sessions **prior** to Call to the Bar.
- That a retendering process for delivery of the BTT and associated compulsory course should be instigated, and that this process should lead to the appointment of the single most suitable provider
- That a revised system for 'appeals' (renamed 'Requests for Review') should be put in place and dealt with at provider or BSB subcommittee level, and only exceptionally by the specially appointed BTT Review Board

Changes to the BTRs requiring LSB approval (if agreed)

11. Two significant changes, which would require amendment of the Bar Training Regulations (BTRs) if approved, would be:
 - Requiring an intention to practise at the Bar of England and Wales (which would need an amendment to BTR 60)
 - Requiring candidates to complete required Qualifying Sessions prior to Call (which would need an amendment to BTR 62(b)).
12. The former has been suggested due to anecdotal and other evidence that the BTT is being undertaken by candidates who simply wish to increase their fee-earning power in the jurisdictions in which they will continue to practise, having been Called to the Bar, rather than any genuine intention to practise at the bar of England and Wales. The latter is necessary in order to ensure that all requirements for Call to the Bar, as for those qualifying in the normal way, have been met, and because of the difficulty of enforcing the existing requirement for candidates to undertake Inns Qualifying Sessions if, as often happens, they have returned to an overseas jurisdiction. To ensure requirements are met is logistically difficult where candidates return overseas but it is vital to ensure that all requirements are met. This is why making Call dependent (as it should be) on the meeting of all requirements is essential.
13. Views of respondents are particularly sought on these two issues.

Possible adverse effects

14. No adverse effects have been identified with regard to the revisions suggested. As indicated above, the emphasis is on clarification of existing rules and guidance rather than the imposition of any new ones. The two proposed changes to the BTRs (as in para 10 above) will simply ensure that the current framework, intended for those transferring to the Bar of England and Wales, are properly and correctly enforced.
15. It is possible that candidates from overseas might find it more difficult to complete their Inns' Qualifying Sessions prior to Call, which might be claimed as possibly

having a disproportionate effect on various ethnic groups domiciled overseas. However, this will not be a problem for those who intend to practise in England and Wales, for which the Test is designed.

The Regulatory objectives

16. Ensuring that all those wishing to practise at the Bar of England and Wales have met the necessary standards (knowledge and skills) is clearly in the public interest (ROa). Some candidates may practise in overseas jurisdictions, but the outcomes are for the Bar of England and Wales and all must reach the necessary standard for this, in terms of Outcomes Focussed regulation (OFR). There is a risk both to individual consumers and to the constitutional principles of the Rule of Law (ROb) if the test is not set and managed appropriately. Access to Justice (ROc) will also be improved by ensuring a test that is fit for purpose, including additional requirements, such as the undertaking of Inns' Qualifying Sessions, or advocacy training during the first six months of pupillage for those who obtain pupillage. The interests of consumers will be protected and promoted (ROd) by ensuring that those who transfer to the Bar from other branches of the legal profession or from overseas meet the required standards. An effective system will also promote competition in the provision of services (ROe) as it will indeed promote competition between providers of the BTT in the tendering process which will drive up efficiency in the delivery of the BTT. All this will assist in encouraging an independent, strong, diverse and effective legal profession (ROf) since others are given the opportunity to transfer, as long as they are of a suitable standard. The new format and operation of the BTT would have no effect, adverse or otherwise on the aim to increase public understanding of the citizen's legal rights and duties (ROg), although it may well increase public understanding of entry requirements to practise at the Bar of England and Wales and provide additional reassurance. Finally, promoting and maintaining adherence to the professional principles, including maintaining proper standards of work; and acting in the best interests of clients (ROh) and compliance with the duty of advocates to the court will be ensured by a well thought out and specified test that is perfectly in line with the Academic and Vocational stages of training.

The Better Regulation Principles

17. The consultation will ensure *transparency* in the BTT and proposed changes, as the BSB will remain *accountable* for the exercise and delivery of the Test. The BSB will continue to monitor the operation of the test, with which it has always been very closely involved. The proposed amendments are *proportionate* in terms of clarifying the requirements of the BTT for providers, candidates and the regulators. The BTT itself is *proportionate* in terms of ensuring that those who are called to the Bar have knowledge and skills that are equivalent to those attained by candidates through the QLD CPE/GDL and the BPTC. *Consistency* will also be achieved through the BTT, as the best method to ensure that there is continuity of knowledge and skills amongst those who wish to practice at the Bar of England and Wales, and yet come from such a wide range of backgrounds in terms of previous education, training, expertise and practice. The test is *targeted* at precisely those individuals who need to be able to demonstrate that they have reached the required standards – the desired outcome of the BTT itself.

The LSB Regulatory Framework

18. The proposed revisions to the BTT are clearly in line with the approach recommended by the LSB, being Outcomes Focussed; geared to the protection

of clients, consumers and the public at large in accordance with a risk based approach; appropriately supervised and monitored; and with systems in place to ensure compliance and enforcement.

Equality Impact Assessment

19. As with other education reviews conducted by the BSB, considerable attention was paid to Equality and Diversity issues throughout the course of the BTT Review. An Equality Impact Assessment has been developed, attached as Appendix D.

Risk implications

20. There are reputational risks for the legal system in England and Wales, for the courts and for the profession of the Bar attached to the possibility of not having an efficient and effective Transfer Test in place.

Part 3 CONSULTATION QUESTIONS

21. The aim of the consultation questions (based on the group's recommendations) is to determine the level of agreement with the recommendations put forward by the BTT Working Group.

Regulatory aspects

- Q1 Do you agree that 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, with information about the regulatory context for the BTT, so as to make all this clear to candidates.
- Q2 Do you agree that the process of assessment of applications and the determining of exemptions through the Qualifications Committee should continue in its present form.
- Q3 Do you agree that the tasks of overseeing the BTT should be formally allocated to the BPTC subcommittee, including dealing with the early stages of candidates' requests for review of their work? Should that committee be renamed as the BPTC and BTT subcommittee or is it reasonable for it simply to take the BTT on as a standing item at all meetings.
- Q4 Should the requirements and guidance on the level of English language skills necessary for practise at the Bar be emphasised in regulations and guidance for candidates, in the same way as for the BPTC?
- Q5 Do you think that the Bar Course Aptitude Test (BCAT) if and when approved and in place should not be a requirement for taking the BTT, due to the fact that all candidates for the BTT are by definition already qualified lawyers?

Content

- Q6 Do you agree with the content of the BTT sections (individually and collectively) as specified in the draft new handbook, which make it clear how sections relate to the QLD/CPE stage and which to the BPTC.

Teaching

- Q7 Do you agree that, since candidates are qualified lawyers, the only compulsory taught course should continue to be Advocacy which should remain in its present format (with the proviso that individuals teaching on the course must not be responsible for assessing the same candidates).

Assessment

- Q8 Do you agree with the proposed assessment system regime, which is based on a simple clarification of the existing system.
- Q9 Do you agree that the frequency of 'sittings' of the BTT should remain as twice yearly but that the Centralised Examinations in Civil Litigation, Criminal Litigation and Ethics should be utilised as for the BPTC (April and August).
- Q10 Do you think it appropriate that the number and system of resits permitted

should remain as at present, but with a further opportunity for a candidate to apply after a lapse of two years to start the process again *ab initio*.

- Q11 Do you agree that the intention to practise at the Bar of England and Wales must be demonstrated on application to the Qualifications Committee.

Inns matters

- Q12 Do you agree that, while candidates may apply for Inn membership prior to taking the BTT or once they have successfully passed the BTT, they must have completed the required number of Inns Qualifying Sessions **prior** to Call to the Bar.

Operational issues and appointment of Provider(s)

- Q13 It is proposed that a retendering process for delivery of the BTT and associated compulsory course should be instigated, with invitations to tender during summer/autumn 2012, and that this process should lead to the appointment of the single most suitable provider. Do you agree?

Reviews and appeals

- Q14 Do you consider appropriate the revised system for 'appeals' (renamed 'Requests for Review') whereby these will be dealt with initially at Provider level, then by the BPTC/BTT committee 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?

- Q15 Do you have any other comments on the BTT or the proposed new arrangements?

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