



The Law Society

Bar Standards Board Review of the Bar Transfer Test

Response to the consultation

August 2012



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Introduction

The Law Society is the representative body for more than 140,000 solicitors in England and Wales. The Society negotiates on behalf of the profession, and lobbies regulators, government and others.

The Law Society welcomes the opportunity to comment on the Bar Standards Board's review of the Bar Transfer Test and our response is attached at **Annex A**.

Annex A

Response to questions

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?

Information on the necessary steps that must be taken to pass the Bar Transfer Test should be clearly and concisely set out to enable the entrant to access it easily.

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?

The guidance for applications and exemptions is clearly set out and, as such, it could be deemed unnecessary for a Committee to meet to decide on each application. Ensuring that evidence submitted with an application meets the necessary requirements might possibly be undertaken by trained administrative staff at a lower cost to applicants, with only cases in which the evidence is unclear or where the applicant has appealed referred to the Committee. This would ensure that high standards are met whilst meeting the Legal Services Act's intentions of encouraging an independent, strong, diverse and effective legal profession. This may be especially relevant given the high costs of the required training and assessments for the BTT.

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?

No response.

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?

The requirement for a competent level of English language could be stated in regulations, but is perhaps best emphasised through guidance what this means in practise, as this would allow flexibility and updating without re-writing regulations and would avoid setting a 'gold plated' standard. The oral elements of the BTT, sections 5 a) and b), should allow adequate opportunity for the language skills of the applicant to be assessed. The Qualified Lawyer Transfer Scheme tests language in this way, as one of the participants in the scenario assesses language, whilst another assesses the applicant's knowledge of the law and skills. To do both elements in tandem seems the most appropriate method.

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?

Yes, the stated aim of the Bar Course Aptitude Test is to determine which candidates are most likely to pass the Bar Course (BPTC), one of the advantages being that those on the course will benefit from being taught alongside those of a similar aptitude level, which, given the group activity-based nature of the teaching for the BPTC, is beneficial. It is difficult to see how the BCAT would apply to the BTT as all candidates have already demonstrated

their aptitude through prior qualifications. We therefore agree that this should not be included as a requirement, in addition to the already heavy assessment requirements.

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.

The content of the BTT sections, in requiring that the same standards in terms of knowledge and skills as the traditional route to becoming a barrister are met, seem correct. Clarity around where sections relate to the QLD/CPE and BPTC would enable candidates to more easily ascertain what knowledge would be assessed in each of the examinations, and therefore be better prepared. This is especially important as it should be possible to study for the BTT independently, rather than undertaking any courses which might be offered, and in order to do so, candidates must have a clear understanding of what they need to learn.

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)?

Yes, it seems appropriate that advocacy remain the only taught course as candidates should pick up the necessary law through other studies for the examinations as part of the BTT. This is in line with the way in which the BPTC is taught, which is seen as the best way of passing on those skills. Whilst it can be assumed that some advocacy experience may have been gained through prior experience, it may be useful for candidates to become familiar with the way in which the systems within this jurisdiction work, as they may vary greatly from what they are familiar with. However, where a candidate can show evidence of previous experience, it seems appropriate that they can apply to be exempted. Clear and concise information on the process for doing this, alongside the types of evidence that should be produced and the thresholds that must be met would be welcome.

Assessment

Q8 Do you agree with the proposed assessment system regime, which is based on a simple clarification of the existing system?

Whilst the clarification of the assessments regime is certainly to be supported, the number of exams required is high compared to, for instance, the Qualified Lawyer Transfer Scheme run by the SRA and could be seen as unduly burdensome for candidates who are already qualified lawyers.

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)?

Yes, this seems an appropriate course of action. Fixed dates for courses or a fixed cycle will enable overseas applicants to plan ahead with their studies and applications and training course providers to do so with their syllabuses.

Q10 Do you think it appropriate that the number and system of re-sits 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?

The system for re-sits as it currently stands seems unduly harsh, a situation which the proposed alteration does little to change. It seems fair to restrict the number of times a candidate may re-sit any given paper but to penalise them by requiring that they then re-sit exams that they have already achieved a pass mark on does not seem to achieve anything further. This is especially relevant given the timetable for the required training, examinations and other assessments, which is held over 9 consecutive days, a regime which could be considered as not allowing necessary time to recoup and prepare from one exam to the next.

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?

It is not clear what the purpose for declaring an intention to practise at the Bar of England and Wales would be and it should be noted that there is no analogous requirement in the QLTS. Provided those practising overseas meet any relevant "overseas practice rules" then it is not clear why this requirement should stand. It seems to act against the use of the English and Welsh jurisdiction as the international jurisdiction of choice. It is also unclear whether there would be any way to monitor applicants once they have qualified, to ensure that this condition was met and maintained.

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?

This condition seems both onerous and impractical for those practising overseas. This appears to be another hurdle designed to support the implementation of the requirement to state an intention to practise in England and Wales. These sessions are most usually part of the requirement prior Call for students who have completed the BPTC, in order for them to gain familiarity with elements of practise. As this scheme is for qualified lawyers wishing to re-qualify in this jurisdiction it may not be an appropriate requirement here.

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?

This proposal appears contrary to an 'encouraging competition' element, albeit that organisations will compete to be that one provider. Providers should be properly assessed and approved, but there is no reason to have only one, a situation which has caused issues with the accessibility of the QLTS, which must surely be replicated here. Having one provider means that there is no competition on price and availability of examinations, two things which could further the aim of a strong, diverse profession. It does not seem in the best interests of the public or the provision of legal services that only those with enough money and the ability to spend time in London for the training courses and exams be able to re-qualify. It would seem logical for the training elements of the BTT, for a minimum, to be regionalised if the specification for the course was set.

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?

The current process seems unwieldy as is explored in the annex to this consultation paper and it is right that there should be some sort of filter for complaints. However, as the BSB will retain oversight of the scheme then applicants should have the opportunity to appeal directly to them. This would be necessary where complaints stemmed from issues with the providers and would in every case ensure that the BSB was made aware of any and all issues with the BTT. The filter could instead be provided through administrative means within the BSB, with only those complaints deemed to be of merit explored further with a Committee convened for the purpose.

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

The BSB may wish to consider similar competing regimes such as the New York Bar Exam and the competitiveness of this scheme against the BTT.