

**BAR  
STANDARDS  
BOARD**

REGULATING BARRISTERS

## **Future Bar Training:**

Consultation on the future of the Bar Course Aptitude Test  
(BCAT)

September 2021

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## **Executive Summary**

### **About the BSB and what we do**

The Bar Standards Board is the regulator of barristers in England and Wales. We are responsible for setting the education and training requirements for those who wish to practise as barristers. Barristers play a vital role in the administration of justice. They must demonstrate a high standard of professional practice to justify the trust placed in them by the public and other professionals. Regulatory oversight of how people train to become barristers is, therefore, important.

### **Our approach to regulation**

The BSB takes a risk-based and outcomes-focused approach to regulation, which requires us to be guided by evidence of regulatory risks. The BSB's [Regulatory Risk Index](#) published in 2019 sets out the things that we have identified in the legal services market that could result in poor outcomes for the public and consumers, and therefore prevent us from delivering our [regulatory objectives](#). Risk-based regulation allows us to take pro-active, proportionate, and targeted measures to address or mitigate risks.

### **About this consultation and the BCAT**

Our regulatory objectives are laid down in the Legal Services Act 2007. Whilst all of the regulatory objectives are relevant to this discussion, the two which we think are most relevant to education and training are “protecting and promoting the public interest” and “encouraging an independent, strong, diverse and effective legal profession”. This is because our focus must be on ensuring that only those capable of becoming competent barristers qualify, and that, in setting our training requirements, we act in a way which promotes entry to the profession for people from all backgrounds.

This consultation seeks views on the Bar Course Aptitude Test (BCAT), which is a prerequisite for students wishing to enrol on a Bar training course; it presents our most recent evidence about the effectiveness of the BCAT in filtering out those students less likely to succeed before they enrol on a Bar training course. It asks you to share your views with us on whether the BCAT should be retained in its current form, be amended, or be withdrawn.

The BCAT was introduced in 2013 as the number of students failing the vocational component of the Bar training was high; too many students who had little prospect of successfully completing a Bar training course were being enrolled. This was also having a detrimental impact on the learning experience of their peers and the ability of lecturers to teach the course. The BCAT was introduced to mitigate this risk by “filtering” for aptitude and preventing such students from enrolling on a Bar training course.

Our recent analysis – outlined in this document – shows that the BCAT has had little effect in filtering out students who do not have the required aptitude for the vocational component of Bar training. As this was its primary function, we are now considering whether the BCAT remains a necessary and proportionate regulatory requirement.

The evolution of admissions processes used by providers of Bar training in recent years (eg more widespread use of interviews and practical exercises at the point of selection) had already seen a shift towards a more selective approach and with the introduction of the new Bar Qualification Rules in 2019, the new Authorisation Framework for those providing Bar training ensured that course providers were required to have clear and robust admissions

policies. These changes appear to have been much more effective than the BCAT at 'filtering' out students without the aptitude to succeed on a Bar training course, which suggests that the BCAT may no longer be necessary.

We want to hear students' and other stakeholders' views on whether or not the BCAT should be withdrawn, retained or amended – and if so, how?

The three options which we ask you to consider in this document are:

- Option 1: Retain the BCAT in its current form as a prerequisite for all students enrolling on a Bar training course;
- Option 2: Retain BCAT as a prerequisite for all students enrolling on a Bar training course, but amend it so that it is a more effective filter; and
- Option 3: Withdraw the BCAT as a prerequisite for students enrolling on a Bar training course.

We also ask you to consider whether there are any further options, which would promote the regulatory objectives and mitigate risk, that we have not considered as part of this consultation.

In particular, we ask you to consider the equality impacts of each option on those who share different protected characteristics and/or those from disadvantaged or underrepresented groups, or those who are neuro-divergent.

The views which we receive in response to this consultation will help us to decide the future of the BCAT.

Please respond to this consultation by emailing us at [policy@barstandardsboard.org.uk](mailto:policy@barstandardsboard.org.uk) by the closing date of **31 October 2021**.

Although the BCAT is under review, it still remains a requirement for entry onto a Bar training course. We expect to announce our decision about the future of BCAT after this consultation has closed and the responses have been analysed. This means a decision is likely to be made around February/March 2022. We will communicate our decision clearly to everyone concerned and provide clear instructions for those intending to apply for a Bar training course from 2022.

# **PART I: ABOUT THE BSB AND OUR CONSULTATION ON THE BCAT**

## **About the BSB and what we do**

1. The Bar Standards Board is the regulator of barristers in England and Wales. The work that we do is governed by The Legal Services Act 2007 (the Act) as well as a number of other statutes.
2. We are responsible for:
  - setting the education and training requirements for those who wish to practise as barristers;
  - setting continuing training requirements to ensure that barristers' skills are maintained throughout their careers;
  - setting standards of conduct for barristers;
  - authorising organisations that focus on advocacy, litigation, and specialist legal advice services;
  - monitoring the service provided by barristers and the organisations we authorise to ensure they meet our requirements; and
  - considering reported concerns about barristers and the organisations we authorise and taking enforcement or other action where appropriate.

## **Our approach to regulation**

3. In exercising our regulatory functions, we must act in a way that is compatible with our regulatory objectives and which we consider most appropriate for the purposes of meeting those objectives. These are:
  - protecting and promoting the public interest;
  - supporting the constitutional principle of the rule of law;
  - improving access to justice;
  - protecting and promoting the interests of consumers;
  - promoting competition in the provision of legal services;
  - encouraging an independent, strong, diverse and effective legal profession;
  - increasing public understanding of citizens' legal rights and duties; and
  - promoting and maintaining adherence to the professional principles.
4. The BSB takes a risk-based and outcomes-focused approach to regulation, which requires us to be guided by evidence of regulatory risks. Risk-based regulation requires us to take pro-active, proportionate, and targeted measures to address or mitigate such risks.
5. We must also have regard to the better regulation principles, which require that our regulatory requirements be transparent, accountable, proportionate, consistent, and targeted only at cases where action is needed. We must also have regard to any other principles that represent best regulatory practice in our decision making.

6. In addition to the BSB's own regulatory framework, the Legal Services Board (LSB) has published [statutory guidance](#) under the Legal Services Act 2007, specific to legal education and training, to which we must have regard. One of its stated outcomes is that regulators place no inappropriate direct or indirect restrictions on the numbers entering the profession.

### **The BSB's role in education and training**

7. Barristers play a vital role in the administration of justice. They must demonstrate a high standard of professional practice to justify the trust placed in them by the public and other professionals. Regulatory oversight over the training and qualification of barristers is, therefore, important.
8. The BSB sets the requirements which prospective barristers must satisfy in order to be Called to the Bar, and the further requirements needed for being authorised to practise.
9. Through the BSB's Authorisation Framework, we set the standards that organisations must meet in order to provide education and training for the Bar. It distinguishes between organisations that wish to offer an academic and vocational (integrated) or vocational component (likely to be universities or other providers of education), and those that wish to offer a pupillage/work-based component (likely to be chambers and organisations that employ barristers and/or solicitors). The Authorisation Framework also provides the basis for ongoing supervision and authorisation renewal (where relevant) of those providing Bar training.

### **About the BCAT and its introduction**

10. Our regulatory objectives are laid down in the Legal Services Act 2007. Whilst all of the regulatory objectives are relevant to this discussion, the two which we think are most relevant to education and training are "protecting and promoting the public interest" and "encouraging an independent, strong, diverse and effective legal profession". This is because our focus must be on ensuring that only those capable of becoming competent barristers qualify, and that, in setting our training requirements, we act in a way which promotes entry to the profession for people from all backgrounds.
11. The BCAT is a prerequisite for all students who have completed the academic component of Bar training – an undergraduate law degree, or a non-law degree and Graduate Diploma in Law (GDL) – and intend to study on the vocational component of training (referred to as a Bar training course in this paper) and is available for students to sit year-round. It is a computerised 55-minute test which consists of 60 multiple choice questions. It is based on a [Watson-Glaser psychometric test](#), designed to assess critical thinking and understanding of arguments – identifying different perspectives and the ability to distinguish facts from opinions and assumptions. It does not test legal knowledge or English language proficiency. The BCAT is delivered by Pearson VUE and costs £150 if taken in the UK and £170 for students sitting the test abroad.

## Why was the BCAT introduced?

12. The BCAT was introduced in 2013 as the number of students failing the vocational component of the Bar training was high. Too many students who had little prospect of successfully completing a Bar training course were being enrolled. This was also having a detrimental impact on the learning experience of their peers and the ability of lecturers to teach the course. The BCAT was introduced to mitigate this risk by “filtering” for aptitude and preventing such students from enrolling on a Bar training course.
13. Following a wide-ranging review of what was then called the Bar Vocational Course (BVC)<sup>1</sup>, the BSB introduced, among other reforms, the BCAT and centralised assessments. These two reforms were introduced as part of the course that succeeded the BVC, the Bar Professional Training Course (BPTC). Together, these reforms were introduced to ensure that Bar training met appropriate standards and that students enrolling on a Bar training course had the required aptitude to be successful on the course.
14. At the time of our consultation on introducing the BCAT, we stated the following:

*The need for candidates to possess adequate skills on entry to training is clear, due in particular to the interactive nature of training on the course. The possession of not only academic knowledge, but also appropriate critical reasoning, use of language and other skills, is fundamental to the concept of providing high quality legal services in the public interest. Study of the BPTC demands a high level of ability and the public interest is best met using a specified entry requirement, applied fairly to all applicants. Moreover, it is in the public interest that the learning experience at Bar School should be of the highest quality and not adversely affected by weaker students during small group sessions, group discussions or while working as pairs in advocacy skills sessions.*
15. Our consultation and reasoning for introducing the BCAT in 2013 can be found [here](#).

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<sup>1</sup> You can read the Wood Review (2008) [here](#).

## PART II: OUR REVIEW OF THE BCAT

### About our review of the BCAT

16. When the BCAT was introduced in 2013, we gave a commitment to evaluate its performance. We have now undertaken this evaluation (attached as [Annex 1](#) to this consultation). In the light of its findings and other information available about the BCAT's performance, we are now reviewing the BCAT from first principles, to determine whether it remains a necessary and proportionate regulatory requirement. With this consultation, we are:
- publishing the results of our evaluation of the effectiveness of the BCAT and additional information we have gathered that is relevant to the discussion;
  - setting out the criteria against which we will assess the future necessity of the BCAT;
  - setting out three options with our assessment of these options against the criteria, in the light of available evidence; and
  - asking a number of questions to help us better understand the risks involved and to obtain views on our assessment of the options.

### Our research relating to the BCAT

17. As an evidence-based regulator, we have carried out two separate evaluations of the effectiveness of the BCAT, one following the first full year of operation, for the 2013-14 cohort, carried out in 2015, and a five-year evaluation, which concluded in 2020. In addition to the two evaluations, we commissioned NatCen in 2017 to carry out qualitative research into barriers to Bar training. This research provides some further insight into students' perspectives of the BCAT.

#### *Findings from the BCAT evaluation – 2015*

18. The findings of the 2015 BCAT evaluation<sup>2</sup> were that:
- the BCAT was not as effective in filtering students enrolling on the BPTC as anticipated, with a failure rate of 0.65% of candidates once retakes were taken into account;
  - doubts were raised in interviews regarding the effectiveness of the BCAT in filtering out candidates less suited to a career as a barrister; and
  - students from minority ethnic backgrounds were found to score lower on the BCAT, when controlling for other factors.
19. Although not the primary purpose of the BCAT's introduction, our evaluation found that performance in the BCAT to be a reliable predictor of success on the BPTC<sup>3</sup>.
20. In light of this evaluation, the BCAT's pass score was raised from 37 to 45 as the test was proving ineffective at filtering out the students without the requisite aptitude for Bar training. You can access more information about this evaluation [here](#).

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<sup>2</sup> Bar Standards Board (2015). Education & Training Committee Paper 8 Appendix 1. BCAT Impact and Performance Evaluation. Accessible online [here](#).

<sup>3</sup> Using average scores, across BPTC modules, a student's BCAT score has been proven to reliably predict BPTC outcomes. This does not mean that passing the BCAT means that students will definitely pass the BPTC.



### *Findings from the NatCen research – 2017*

21. We commissioned NatCen to carry out qualitative research on barriers to Bar training<sup>4</sup>. This research looked at the student journey, from beginning to end, and included some questions relating to the BCAT. You can access this research [here](#).
22. Whilst some students acknowledged a need for some type of filter for aptitude, others criticised the BCAT:
  - as not fit for purpose; and
  - for constituting an extra financial burden, especially for candidates from lower socio-economic status groups.

### *Findings from the BCAT evaluation – 2020*

23. When BCAT was introduced in 2013, we gave a commitment to evaluate its performance after certain number of years. Last year, we concluded this longer-term evaluation which covers a five-year period between 2013-14 and 2018-19. This evaluation highlights the extent to which the BCAT is meeting its objectives.
24. The key findings from this evaluation relating to the performance of the BCAT are that:
  - the BCAT has not proved effective at filtering out students likely to fail the BPTC, with an overall failure rate on the test of 1% of candidates, once retakes are taken into account<sup>5</sup>;
  - The test does not seem to be reliable or consistent. Average scores on the BCAT have increased over time, even when looking at students with similar prior educational attainment, which suggests that students with similar aptitude will score differently on the BCAT depending on the year they took the test. In addition, there is a low correlation between scores across BCAT attempts for those that retake the test.
25. Our evaluation found that the failure rate on the BCAT has varied significantly over time. Failure rates on the BCAT were between 1-3% for the first four years of operation. Following the higher pass mark being introduced in 2016-17, the rate of failure increased to 8%. This rate had dropped back down to 3% by 2018-19.
26. The evaluation also found BCAT scores continue to be a reliable predictor of BPTC attainment, although less so than was observed during the initial BCAT evaluation in 2015. This may, in part, be explained by the upward trend in BCAT and BPTC students enrolling with higher first degree classifications.
27. It is important to note that this evaluation cites data available to the BSB at the time the evaluation was undertaken in 2020. This means that the data referred to in this consultation have been collected from course providers prior to our wider reforms to education and training in 2019, including the BSB's Authorisation Framework – the regulatory tool for assessing course providers' compliance with BSB requirements when being authorised and on an ongoing basis.

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<sup>4</sup> Barriers to training for the Bar: a qualitative study, The Bar Standards Board, June 2017

<sup>5</sup> The failure rate on the BCAT was predicted to be 15% following the increase of the pass score to 45. This prediction was based on actual performance of the first BCAT cohorts.

## Assessment of risk

28. As a risk-based and outcomes-focused regulator, it is important for us to assess whether the risks which were seen at the time of introducing the BCAT still exist today, in order to determine whether the BCAT remains a necessary regulatory requirement.
29. In this section of the consultation, we examine the evidence available to understand if our assessment of the risks is accurate. Here, we revisit the key indicators for the BCAT's introduction, namely, the External Examiner Reports which refer to the concerns about the abilities of students undertaking the course and the impact it was having on other students' experience, and the BPTC failure rates.

### *External Examiner Reports*

30. We appoint External Examiners who act on our behalf in monitoring the consistency of standards of assessments set and marked by course providers. The system of External Examiners operates broadly in accordance with the QAA's Quality Code (chapter B7). Our External Examiners are responsible for confirming whether or not:
  - the assessment process measures student achievement rigorously and fairly in line with the Curriculum and Assessment Strategy; and
  - the standards and the achievements of students are consistent between course providers.
31. Prior to the 2020-21 academic year, their role also involved observing classes and speaking to students. There were a series of External Examiner reports leading up to the introduction of the BCAT, which highlighted the problem of less capable students having a negative impact on the learning experience of the more capable students.
32. Our review has involved looking back at External Examiner reports from the last two years to understand if External Examiners have noted concerns similar to those reported prior to the BCAT's introduction more recently.
33. Having reviewed the External Examiner reports, there is no evidence of complaints similar to those reported to us in the years preceding the BCAT's introduction. Student satisfaction (as reported by students to the External Examiners) was also high. In the 2018-19 year, one course provider was commended by an External Examiner for having improved admissions and the resulting conversion rates for students obtaining pupillages. Based on the above, it appears that the wide-spread concerns relating to aptitude raised at the time the BCAT was introduced in 2013 have not been reported recently.
34. However, as part of our Annual Reflective Review process, some course providers have reported some student complaints about the language proficiency of some of their peers. Course providers are required to verify students' proficiency and there are clear mechanisms for the BSB's Supervision Team to monitor compliance and take action where course providers are not taking appropriate steps to verify students' English language abilities<sup>6</sup>. We will continue to monitor this with course providers, but it is important to distinguish between academic aptitude and English language proficiency, which the BCAT was not designed to measure.

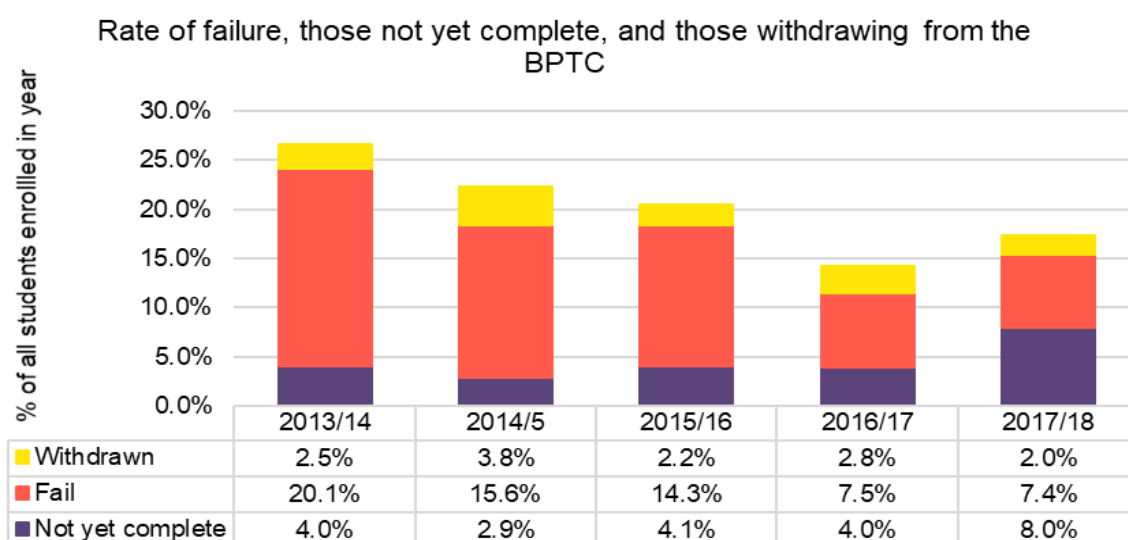
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<sup>6</sup> [BSB Authorisation Framework 2018](#), p10.

### BPTC Failure Rates

35. Our primary objectives in introducing the BCAT were to ensure that candidates for the BPTC had the aptitude to succeed on the course and that the learning experience for all BPTC students should not be adversely affected by having students who did not have the necessary aptitude on the course. One way of assessing whether BPTC students have the necessary aptitude for the course is to measure student failure rates on the BPTC. Figure 1 shows the percentage of students failing BPTC across the five years of 2013-14 to 2017-18 has declined<sup>7</sup>.

**Figure 1: Percentage of students failing the BPTC between 2013-14 – 2017-18**



### Conclusions on risk

36. In light of recent External Examiner reports and an analysis of improving bar course results, the evidence available suggests that student aptitude has improved over time. However, given the performance of the BCAT in filtering for aptitude observed in our evaluation, we must conclude that such improvements cannot be solely attributable to the BCAT acting as a filter. We, therefore, examine what other factors may be contributing to the improvements observed.

### Course provider admissions requirements

37. One of the reasons for the reduced failure rates and improved aptitude on Bar training courses is likely to be course providers introducing more robust admissions requirements (eg interviews or degree classification) to filter out students who are less likely to succeed on the course. This is because the BCAT is directly excluding or filtering only 1% (on average) of test takers, whereas course providers' admission procedures seem to be excluding nearly half of applicants. Over the same period, we have observed a steady improvement in students' qualifications gained<sup>8</sup> before enrolling on the BPTC; this may mean that course providers are becoming more

<sup>7</sup> Figure 1 has been taken from the annual BPTC Key Statistics Report up to 2021. Note that cohorts after 2017-18 are not presented as at the time the most recent report was published, later cohorts were still able to retake examinations, and thus failure rates would not be comparable to previous years'

<sup>8</sup> First degree classification (eg a first class or upper second class degree as opposed to the minimum degree award, a lower second class).

selective in their admissions, and/or less capable students are self-selecting by not enrolling on a Bar training course. Failure at the BCAT does not seem to be deterring students from seeking to enrol on the BPTC since the proportion of those seeking to go on to the BPTC after failing the test once or even twice is not dissimilar to the proportion who pass the BCAT first time.

38. In addition to the improvements observed relating to exams, some course providers have recently introduced interviews or higher undergraduate degree classification requirements as part of their admission process. For example, some course providers, are now requiring a first or upper second-class degree, rather than a lower second-class degree (the minimum standard classification required by the BSB). Other course providers also require an upper second-class degree as the minimum but will consider students with a lower second-class degree if other areas of the candidate's application are exceptional, citing excellent academic performance subsequent to completion of the undergraduate degree, work experience, and strength of the application as areas where a student can demonstrate excellence. Over-reliance on prior educational attainment could have an adverse impact on diversity, as it could reinforce inequalities that already exist in the education system. One of the attractions of a test like the BCAT (if it is working effectively) is that it focuses on aptitude rather than prior attainment. However, there are other mechanisms through which we can monitor the impacts on diversity of student recruitment by course providers. Should there be evidence of adverse impacts on student diversity due to an increased reliance on prior attainment, such as requiring a first-class or upper second-class degree, we will work with course providers to mitigate such impacts and ensure that admissions policies are aligned with expectations set out in the Authorisation Framework.

#### *Future Bar Training Programme*

39. It is also worth noting that since introducing BCAT in 2013, we have been reviewing the way in which barristers in England and Wales train and qualify. This programme of reform to the education and training of barristers has been known as the Future Bar Training (FBT) programme. This programme has seen changes to each of the components of Bar training: the academic, vocational and work-based learning (pupillage) components with the stated aim of making Bar training more accessible, flexible and affordable whilst maintaining the high standards expected. You can learn more about [training and qualifying to become a barrister](#) on our website.
40. The reforms resulting from this programme, including the introduction of the Authorisation Framework, have now almost all been implemented, and we will be evaluating the impact of these wider changes in due course. Until the evaluation is complete, we cannot say with certainty the impact of this programme on improving the aptitude of students undertaking training and qualifying as barristers, but it is important to highlight this as a potential source improvement to standards overall.
41. The analysis above shows that the risks highlighted prior to the BCAT's introduction do not seem to be presenting as they previously were and the improvements to student outcomes (ie reductions in failure rates on the BPTC) cannot be attributed to the BCAT operating as it was intended. This raises a question regarding the future of the BCAT.

## Part III: OUR OPTIONS FOR THE FUTURE OF THE BCAT AND CONSULTATION QUESTIONS

### Options Analysis and Equality Impact Assessment

42. This consultation has, thus far, presented the rationale for the BCAT's introduction as well as the evidence gathered on its effectiveness as a filter using our evaluation. Evidence, such as reports from External Examiners and information on course providers' admissions policies and introduction of the Future Bar Training reforms have been reviewed to help us better understand the BCAT's effectiveness and what other factors may be contributing to the improved aptitude of Bar students, when compared with those prior to the BCAT being introduced.
43. This part of the consultation evaluates the three options we have considered. We have set out our thinking on each of the options within the BSB's regulatory framework and our requirements, as a public body, under equalities legislation. For each option, the current BSB-set entry requirements in addition to passing the BCAT would continue to apply<sup>9</sup>.
44. In assessing each of the options, we have considered compatibility with the following:
- a) our risk framework and our regulatory objectives;
  - b) the better regulation principles of proportionality, accountability, consistency, targeting and transparency; and
  - c) our need to have regard to the LSB's statutory guidance on legal education and training.
45. As a public body, the 'Public Sector Equality Duty' in the Equality Act 2010 requires us to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between different people when carrying out our activities. We must, therefore, assess the equality impact of all our decisions.
46. We, therefore, also consider each of the options based on the following questions:
- a) Do the failure rates (of the BCAT) show a disproportionate impact on those with certain protected characteristics?
  - b) What impact does the BCAT, as a deterrent on enrolling on the BPTC, have on those with certain protected characteristics?
  - c) In the case of Option 3, if the BCAT is withdrawn on the assumption that the course providers' admissions processes are performing better as a filter, what impact might this have on those with certain protected characteristics?

### **Option 1: Retain the BCAT in its current form as a prerequisite for all students enrolling on a Bar training course**

47. In this option, the BCAT would continue to be a prerequisite for all students intending to enrol on a Bar training course. There would continue to be a cost to students for the

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<sup>9</sup> These requirements include an undergraduate degree which was obtained at lower second class or higher (or equivalent).

test, as is the case today. That cost is currently set at £150 for students sitting the test in the UK and £170 for students overseas.

48. When the BCAT was introduced, we said that such an aptitude test was necessary to address the risk of high numbers of students failing a Bar training course and to maintain high standards and student experience on the course. As such, it was consistent with the regulatory objectives of “protecting and promoting the public interest” and “encouraging an independent, strong, diverse and effective legal profession”. This is because the BCAT was developed to ensure that only those capable of qualifying and practising as a barrister should be allowed to enrol on a Bar training course. Our regulatory requirement (the BCAT) was justified, based on the evidence of risks at the time of implementation.
49. In assessing this option, we must consider whether the BCAT remains a necessary and proportionate regulatory requirement, relative to the risks present today. Our current evidence shows that these risks may not be presenting as they did when the BCAT was introduced. Whilst student aptitude seems to have improved, we do not believe that this has been solely due to the BCAT but rather due to changes in course providers’ admission processes and/or potentially, students’ own self-selection.
50. Unless there is other evidence that we are unaware of, retaining the BCAT does not seem to be a necessary or proportionate response to a low risk of students enrolling on a Bar training course without the required aptitude for the course. As part of this consultation, we welcome any additional evidence that supports the continuation of the BCAT from the perspective of promoting the regulatory objectives.

#### *Equality Impact Assessment*

51. Our Equality Impact Assessments show that students from minority ethnic backgrounds are less likely to pass the BCAT than White British students, even when looking at students with similar prior educational attainment. The potential disadvantage faced by students from minority ethnic backgrounds was considered when setting the initial pass mark at 37 in 2013, and when raising the pass mark to 45 in 2015, in order to minimise any adverse impact on disadvantaged groups in line with best practice for selection tests. However, given that the risks the BCAT was introduced to mitigate are not presenting as they were previously, any disproportionate impact in terms of race and ethnicity may not be justified, even if actions have been taken to mitigate any adverse impact.
52. The BCAT may also be disproportionately deterring international students and older students from enrolling on a Bar training course. However, the evidence for this is not conclusive. The cost to students of taking the BCAT may also be seen as a deterrent on groups from lower socio-economic backgrounds. Therefore, through this consultation, we aim to understand better the impact of the proposed options on equality and diversity.

#### **Option 2: Retain the BCAT as a prerequisite for all students enrolling on a Bar training course but amend it so that it is a more effective filter**

53. This option would amend the BCAT to improve its effectiveness, in the light of our evaluation and responses to this consultation. This option would mean all students wishing to enrol on a Bar training course would continue to incur a cost for the BCAT,

although under this option there may be additional costs due to the need to amend the test specification.

54. As explained under option 1, retaining BCAT as a filter does not seem to be a necessary or proportionate response based on the research and analysis we have undertaken. In assessing this option, we must therefore consider whether evidence of any risks we were unaware of has emerged from the responses to this consultation. Should new evidence be presented through this consultation process which warrants regulatory action to be taken, we will consider whether amending the BCAT addresses the risks presented and whether an amended BCAT is a proportionate regulatory requirement, relative to the risks presented.
55. As with option 1, unless further evidence of students lacking aptitude emerges from this consultation, we cannot say that retaining the BCAT would continue to be consistent with either the regulatory objective of protecting and promoting the public interest or our objective to encourage an independent, strong, diverse and effective legal profession, as the potential adverse impacts will no longer be justified.
56. In the interest of transparency and accountability, we would consult further on any changes that we make to the BCAT, and the risks would be presented alongside any equality impacts and indicative costs to students.

#### *Equality Impact Assessment*

57. Any changes to the BCAT which increase the number of students failing the test are likely to result in higher proportions of students from minority ethnic backgrounds being filtered than White British students, even when considering prior attainment.
58. When the BCAT pass mark was increased from 37 to 45 in 2016, this was a key consideration in choosing 45 over a higher pass mark. Should there be a need for the BCAT to be respecified, we would conduct a full equality impact analysis before it is implemented.

#### **Option 3: The BCAT is withdrawn as a prerequisite for students enrolling on a Bar training course**

59. Should the BCAT be withdrawn as a regulatory requirement, the BCAT would no longer be a prerequisite for enrolling on a Bar training course.
60. Under this option, we consider whether removing the BCAT as a filter for aptitude and relying on other regulatory requirements for entry to a Bar training course would be compatible with our risk analysis.
61. The evidence we have gathered (from our evaluation of the BCAT, through reports from External Examiners, information on course providers' admissions policies and the NatCen research on barriers to Bar training) has improved our understanding of the BCAT's effectiveness in contributing to the improved aptitude of Bar students today. This analysis has suggested the BCAT is having minimal impact on filtering out students who lack the required aptitude to successfully complete a Bar training course and become practising barristers. Unless further evidence is presented to support the need for the BCAT or another type of regulatory requirement, the withdrawal of the BCAT as an option would be consistent with our risk-based approach to regulation.

62. Without the BCAT, we have considered whether it would be appropriate for us to rely on the admissions requirements set by course providers to ensure that only those who are capable of success on a Bar training course are enrolled. We believe it would likely be appropriate for us to do so, as we now have processes in place to supervise these policies through the BSB's Authorisation Framework and take action, if necessary. We also collect, analyse, and publish data on enrolment, including data disaggregated by protected characteristics and disadvantaged groups, to ensure that course providers are balancing the requirements of the Authorisation Framework when setting admissions policies and procedures.
63. We also believe this option to be consistent with the regulatory objectives highlighted above, protecting and promoting the public interest and encouraging an independent, strong, diverse and effective legal profession. For example, we have recently completed a reform programme which sets the end point for training, based on a set of competences, the Professional Statement for barristers, which enables providers of education and training deliver curricula which meet the standards required. These reforms, and those implemented by course providers to ensure students have the required aptitude, have helped us to protect and promote the public interest.
64. This option would mean students wishing to enrol on a Bar training course would no longer incur the cost of £150 or £170 to take the test, thus ensuring that there are no unnecessary barriers placed to enrolling on the course and subsequently entering the profession.

#### *Equality Impact Assessment*

65. Our review has concluded that the improvements in student aptitude observed in our research are not directly related to the BCAT but are more likely to be a combination of Bar course providers' admissions policies and, potentially, students' own self-selection. If the BCAT is withdrawn, there will be more reliance on other entry requirements such as degree classification and course providers' admissions policies to ensure students enrolling on a Bar training course possess the required aptitude.
66. Because there will be more reliance on course providers' admissions policies, we must understand what impact that may have on the diversity of student admissions. We have analysed the data on student enrolment over the last few years, and the changes that have been introduced by various course providers do not appear to have had an adverse impact on equality and diversity, though we note the upward trend in relation to prior academic attainment<sup>10</sup>. Through this consultation we wish to hear from students and course providers, in particular, to help understand how admissions processes have had an impact on student diversity. We note the risk that over-reliance on prior academic attainment as a selection tool could perpetuate inequalities that already exist in the education system. If there is evidence of adverse impacts on student diversity as a result of admissions policies, we will work with course providers to mitigate any adverse impacts and ensure that admissions policies are aligned with expectations set out in the Authorisation Framework.

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<sup>10</sup> Our evaluation has shown there to be a trend in Bar training course students with a higher percentage having obtained a First or Upper Second-Class degree before taking the BCAT and enrolling on a Bar training course.



## **Our consultation questions**

### **General Questions**

1. Do you agree with our analysis of the risks associated with student aptitude and the appropriateness of the BCAT as a regulatory requirement?
2. Is there evidence of other risks we should consider in relation to student aptitude for Bar training as part of our review?
3. Does the BCAT help students make an informed decision on whether to enrol on Bar courses? If you are a current or former Bar student, did the BCAT help you to decide whether to enrol on a Bar training course? Please state how.

### **Option specific Questions**

4. Which option do you prefer and why?
5. If you prefer option 2, what are the risks that should be addressed and how should the BCAT be amended/replaced to ensure it is addressing the risks identified?
6. Are there any other options we should consider? If so, please state why.

### **E&D specific questions**

7. In addition to those already stated, does the requirement to take the BCAT before enrolling on a Bar training course have any negative equality impacts on those from disadvantaged or underrepresented groups, or those who are neuro-divergent? If so, please state why.
8. In addition to those already stated, do the proposed policy options have any negative equality impacts on those from disadvantaged or underrepresented groups, or those who are neuro-divergent? If so, please state why.

### **Anything else**

9. Is there anything else you would like to tell us?

## **PART IV: HOW TO RESPOND TO THIS CONSULTATION**

67. The deadline for this consultation is **31 October**. You do not need to wait until the deadline to respond to this consultation. **Please use [the form provided](#) to submit your response to: [policy@BarStandardsBoard.org.uk](mailto:policy@BarStandardsBoard.org.uk).**
68. If you have a disability and have a requirement to access this consultation in an alternative format, such as larger print or audio, please let us know. Please let us know if there is anything else we can do to facilitate feedback other than via written responses.
69. Whatever form your response takes, we will normally want to make it public and attribute it to you or your organisation and publish a list of respondents. If you do not want to be named as a respondent to this consultation, please let us know in your response.

### **Decision timeline and impact on ongoing exams**

70. We expect to announce our decision about the future of BCAT after this consultation has closed and the responses have been analysed. This means a decision is likely to be made around February/March 2022.
71. Until a final decision has been made on the BCAT and a timeline set out for the implementation of that decision, it remains a requirement for entry onto a Bar training course. We will communicate our decision clearly to everyone concerned and provide clear instructions for those intending to apply for a Bar training course from 2022.