



**LEGAL SERVICES
BOARD**

The Chief Executive's Office
Legal Services Board
7th Floor
Victoria House
Southampton Row
London WC1B 4AD

T 020 7271 0050
F 020 7271 0051

www.legalservicesboard.org.uk

Dr Vanessa Davies
Director
Bar Standards Board
289-93 High Holborn
London
WC1V 7HZ

24 July 2012

Dear Vanessa

Decision Notice for the Bar Standards Board's application for approval of changes to Regulatory Arrangements relating to entry requirements for the Bar Professional Training Course (BPTC)

Please find enclosed our final Decision Notice granting the Bar Standards Board's application for approval of changes to Regulatory Arrangements to the Bar Training Regulations to allow the introduction of the Bar Course Aptitude Test for which a minimum score must be achieved prior to commencing the BPTC. This Notice should be considered effective as of today, Tuesday 24 July 2012.

A copy of the Decision Notice will be published on our website Wednesday 25 July 2012.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Chris', is written over a light blue horizontal line.

Chris Kenny
Chief Executive

E chris.kenny@legalservicesboard.org.uk

Enclosures

Cc Baroness Ruth Deech, Chair, Bar Standards Board
Dr Valerie Shrimplin, Head of Education Standards, Bar Standards Board



Legal Services Board – Decision Notice issued under Part 3 of Schedule 4 to the Legal Services Act 2007

Amendments to the Bar Training Regulations – Entry Requirements for the Bar Professional Training Course

The Legal Services Board (LSB) has granted an application for amendments to the entry requirements for the Bar Professional Training Course (BPTC) to introduce a requirement that all applicants attain the minimum required standard as specified by the BSB on the Bar Course Aptitude Test (BCAT) prior to commencing the BPTC.

This decision notice sets out the basis for the LSB's approval and the decision taken, including a brief description of the changes.

Introduction

1. The LSB is required by Part 3 of Schedule 4 of the Legal Services Act 2007 (the Act) to review and approve or reject alterations to the regulatory arrangements of the approved regulators. The Bar Council is an approved regulator and the BSB is the regulatory arm to which the Bar Council has delegated its regulatory functions.
2. Paragraph 25 of Schedule 4 to the Act explains that the LSB may only refuse an application setting out a proposed change to the regulatory arrangements if it is satisfied that by granting the application one or more of the criteria specified in sub paragraph 25(3) (and listed in the footnote below¹) will be met. For example, the LSB's granting of the application to alter the regulatory arrangements must not be prejudicial to the regulatory objectives overall. Accordingly, if the LSB is not satisfied that one or more of the criteria for refusal are met, then it must approve the application in whole, or at least the parts of it that can be approved, if other parts of the application satisfy the refusal criteria.
3. As provided for by paragraphs 20(1) and 23(3) of Schedule 4 to the Act, the LSB has made rules² about how the application to alter the regulatory arrangements must be made including the contents of that application. The rules highlight the applicant's obligations under section 28 of the Act to have regard to the Better Regulation Principles. The rules also require that the applicant provides information about the

¹ The Board may refuse the application only if it is satisfied that—(a) granting the application would be prejudicial to the regulatory objectives, (b) granting the application would be contrary to any provision made by or by virtue of the Act or any other enactment or would result in any of the designation requirements ceasing to be satisfied in relation to the approved regulator, (c) granting the application would be contrary to the public interest, (d) the alteration would enable the approved regulator to authorise persons to carry on activities which are reserved legal activities in relation to which it is not a relevant approved regulator, (e) the alteration would enable the approved regulator to license persons under Part 5 to carry on activities which are reserved legal activities in relation to which it is not a licensing authority, or (f) the alteration has been or is likely to be made otherwise than in accordance with the procedures (whether statutory or otherwise) which apply in relation to the making of the alteration.

² Rules for Rule Change Applications – Version 2 (November 2010)

nature and effect of each proposed change and of appropriate consultation undertaken. Sub paragraph 25(3)(f) of Schedule 4 to the Act requires that each proposed alteration has been made or is likely to be made in accordance with the procedures (whether statutory or otherwise) which apply in relation to the making of the alteration. This therefore includes the LSB's rules.

4. The chronology for the LSB's handling of this application can be found towards the end of this decision notice.

Decision

5. The application sought approval to amend regulation 25 of the Bar Training Regulations (BTR 25) to require all applicants for the BPTC to attain the minimum required standard as specified by the BSB on the BCAT. It was proposed that this should be achieved by the addition of 25(c) to the existing BTR 25 as below, shown in bold underline:

25. Before commencing the Vocational Stage, a person must:

(a) have completed (or been exempted under Part VII of these Regulations from) the Academic Stage; and

(b) be a member of an Inn of Court.

(c) have achieved a score of -1.34 or such score as substituted by the BSB from time to time in the Bar Course Aptitude Test (BCAT).

6. During the initial determination period the LSB carefully analysed the application and supporting material and requested further information from the BSB. The additional responses received included further discussion of the results of the pilot studies undertaken by the BSB. The BSB piloted the BCAT by using students on the BPTC over two years, in the course of which BSB undertook regression analysis to assess the efficacy of the test.
7. The LSB enquired into a number of significant issues about the BCAT proposal in relation to the regulatory objectives and better regulation principles set out in the Act. These included:
 - the extent to which, given the currently high number of students who fail to obtain pupillage, the introduction of the BCAT would have any positive impact on the number or competence of authorised persons. This is relevant to an assessment of the proportionality of the regulatory measure, given that the BCAT is anticipated to have little or no impact on those individuals ultimately authorised to practise.
 - the impact on diversity that the BCAT may have and whether the BSB had adequately understood and mitigated the risks of adverse impact, in the light of the regulatory objective to encourage an independent, strong, diverse and effective legal profession.

- In the light of the BSB's obligations under section 3 of the Act, whether the BCAT was proportionate and targeted, given the additional selection criteria already in place on some providers' courses, the relative predictive power of degree classification, the additional cost involved and the number of students who passed the BPTC but failed the BCAT in the pilots.
 - Also in the light of the section 3 responsibilities in relation to transparency, whether the logit model of statistical analysis, was a more appropriate test for assessing the effectiveness of the proposed intervention than that undertaken by BSB.
8. In response to the LSB's requests for clarification, the BSB made a number of more detailed responses. The responses argued that:
- there was evidence that some students were not achieving as high marks as they might otherwise (even if they still were meeting the required level of competence) because the presence of the weakest candidates is adversely affecting the learning environment.
 - the test was developed by industry leading experts to ensure that there was not bias in the questions used in the BCAT.
 - the Wood review considered raising the required degree classification instead of introducing an aptitude test and that it was rejected as there is significant variation between degrees of the same classification and it may have excluded some who go on to be successful at the bar and.
 - the choice of regression analysis in analysing the pilot results represented the most suitable statistical analysis available.
9. In addition to these specific individual queries, we have considered broader public interest questions. To the extent that the BCAT would not necessarily lead to an increase in the quality of individuals ultimately authorised to practise as authorised persons (and therefore the services they provide to consumers), the proportionality of the regulatory intervention may be hard to determine. Where the aim is to improve a perceived deficiency in the 'learning experience' for students on approved courses, thought might be given as to whether the BSB is the body best placed to address the issue, or whether it could be dealt with by the training providers, for example. Even where it is appropriate for the BSB to act, it may be most effective for it to offer a range of options to secure the outcome, rather than only one. To the extent therefore that the application might be portrayed as extending the scope of regulatory reach in an inflexible way, for an unproven benefit, the impact on the public interest is of particular relevance.
10. However, as the LSB's analysis progressed, it became increasingly clear that many of the relevant issues are impossible to verify in absolute terms at this stage by the very fact that the test has not operated in practice, other than in limited pilot circumstances. This uncertainty has a material impact on our ability to reach

definitive conclusions, both about the impact in relation to individual regulatory objectives and better regulation duties, and our assessment of the broader impact on the overall public interest.

11. In reaching a decision on whether to approve the rule change prior to issuing a warning notice, the LSB must consider whether any anticipated additional information would add materially to that which it had been able to gain at earlier stages of the process. Ultimately, any decision by the LSB to refuse an application (having first issued a warning notice) must be based on clear evidence enabling it to be "satisfied" that refusal is justified.
12. In order to be satisfied that the operation of the BCAT would be contrary to the public interest, proper statistical analysis on a larger scale and over a longer timespan than could be done in pilot mode would need to be undertaken. This analysis would need to consider not just course outcomes but also success of candidates at the pupillage stage (i.e. the stage after the BPTC). Since the available sample of students in the pilot studies is necessarily constrained and the long term tracking of students into pupillage has not been able to be done, the LSB considered that seeking further information from consultees through the warning notice procedure was unlikely to provide evidence of actual impact over a sustained period.
13. The LSB therefore sought to understand the BSB's plans to evaluate the operation of the test in practice. These plans are set out at a high level in the action paragraph below and are continuing to be refined in dialogue between the BSB and the LSB. The LSB welcomes the BSB's commitment to this process. It attaches considerable importance to the fact that a wide range of emerging data will be made available publicly throughout the process and that the BSB will make a further decision at the end of the process about whether to maintain, amend or cease the requirement for the BCAT.
14. The LSB considers that satisfactory implementation of these proposals for evaluation will ensure that both it and the BSB are in a far better position to reach a more rounded assessment of the desirability of the BCAT against the tests in the Act at that stage. It considers that facilitating such a form of experience based evaluation would, on this occasion, be a more proportionate response than seeking further advice through the warning notice procedure, given the inevitable practical constraints on any views that can be offered at this stage.
15. Against this background therefore, the LSB is not satisfied that, having considered BSB's application against the criteria in paragraph 25(3) of Schedule 4 to the Act, there is any reason to refuse this application; accordingly, the LSB grants this application.
16. While the application to modify the Bar Training Regulations has been approved by the LSB, it should be noted that the "cut score" of -1.34 is a regulatory arrangement within the meaning of s21(1)(i) of the Act and therefore any modification to the score would require further approval by the LSB. The LSB understands that the BSB has no plans to make any such modification during the evaluation period.

Chronology

- The LSB confirmed receipt of an application from the BSB on 26 April 2012. Further information was received on 28 May 2012 and 16 July 2012.
- The 28 day initial decision period for considering the application ended on 24 May 2012
- Due to the complexity of the application, on 21 May 2012, the Decision Period was extended to 24 July 2012.
- This Decision Notice is being published on our website on 25 July 2012.

Actions

17. The BSB has committed to undertake the following actions:

- a five year data gathering, analysis and evaluation period, to build the required information for evaluation of the BCAT impact
- a continuation of the gathering and analysis of data consistent with the phase one and two pilots,
- additional data collection and analysis, to be agreed in consultation with the LSB, and focussing especially on data in relation to socio-economic background of participants as well as, of course, all other relevant and appropriate equalities strands
- the "raw" data to be made available publicly
- to consider establishing an advisory group including independent expert input agreed with the LSB
- a formal review point after five years, with a positive decision to continue, revise, suspend or cease the BCAT

Chris Kenny, Chief Executive

Acting under delegated authority granted by the Board of the Legal Services Board