

Summary of Consultation and Engagement on future of the BCAT

1. A consultation on the future of the BCAT ran from 1 September to 31 October 2021. A consultation document was published calling for written responses to consultation questions (referred to as 'general consultation').
2. In parallel to the general consultation, we surveyed (referred to as the 'student survey') a sample of BCAT candidates from the last three years to gain the views of students who went on to enrol on a Bar training course, and those who decided not to continue studying for a career at the Bar. This survey asked similar questions to the consultation but was targeted at former BCAT takers to better understand their views on the BCAT's effectiveness.
3. During the consultation period, we also undertook targeted engagement in the form of roundtable discussions, which included: the Bar Council's Education and Training Committee and the Young Barristers' Committee; Bar training providers; and Pearson VUE, our BCAT delivery partner. Following the consultation's closure, we held further meetings with Bar training providers, the Bar Council, and the Inns in order to discuss concerns raised in the written consultation.
4. In total we received 17 responses to the general consultation. The respondents were the Bar Council, Lincoln's Inn, the Legal Services Consumer Panel (LSCP), BPP University, University of Law, Pearson VUE, an individual lecturer from City University (responding as an individual), a Professor from City Law School (responding as an individual); individual students (five); individual barristers (four), and the BSB's independent psychometrician. There were 28 respondents to the 'student survey'.
5. The consultation presented our analysis of risk and evidence. It also offered respondents three possible options for the future of the BCAT:

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

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; and

Option 3: Withdraw the BCAT as a prerequisite for students enrolling on a Bar training course.

Risk relating to aptitude

6. Most respondents to the general consultation (11/17), agreed with our analysis of risk and the appropriateness of the BCAT as a regulatory requirement. However, many of these were nuanced. Several of the respondents who said they agreed with us agreed with some but not all of our analysis. Four out of 17 respondents believe that there is insufficient data or evidence to warrant our conclusions or to remove the BCAT.
7. Two (individual barristers) out of 17 respondents to the general consultation, and seven out of 28 respondents to the student survey stated that it would be unfair to allow students who do not have the required aptitude to enrol on a Bar Course. However, all except one respondent who made this assertion were speaking on behalf of others and not themselves. The one respondent, speaking from personal experience, believes that doing well on the BCAT provides one with the confidence to enrol on a Bar training course.

8. Four (three barristers and one law student) out of 17 respondents to the general consultation, and two out of 28 respondents to the student survey commented on the impact of weaker students on peer learning. However, this is anecdotal and they have not described in what way it impacts peer learning.
9. Five (three barristers and two law students) out of 17 respondents to the general consultation believed that the risk to diversity should be a serious consideration in continuing the BCAT (please note this was different to responses to the separate question on equality impact).

Bar Council

10. The Bar Council, whilst agreeing with our analysis of student aptitude set out in the consultation paper, stated that the low performance by students and variation of performance (by education providers) over the recent sittings of the centralised assessments (criminal and civil litigation) mean that the problem the BCAT was developed to solve is now re-emerging. Therefore, they believe that this is not the right time to withdraw the BCAT. They also believe that the variation in pass marks between providers was an indication that a centralised regulatory filter was required. The Bar Council also suggested that the Inns could undertake this to bring the costs down to students.

Lincoln's Inn

11. Lincoln's Inn believed that the original rationale for introducing the BCAT remains. They too point to the centralised assessments in 2020 / 2021 as an indication that the risks that the BCAT was intended to address are re-emerging.

Legal Services Consumer Panel

12. The LSCP has stated that having carefully considered the evidence and analysis provided, it does not believe the risks that the BCAT was intended to address persist.

Providers

13. We held a further engagement event with providers to understand some of the issues that were raised by respondents in the general consultation. It was the view of providers that the risks that the BCAT was intended to address do not persist. They believe that they have effective mechanisms in place to filter for aptitude, which are balanced against equality and diversity impact, and the BSB's Authorisation Framework. In our engagement with providers, they could not think of any recent examples of having to withdraw an offer to a student who was unable to pass the BCAT.

Effectiveness of the BCAT and the need for a regulatory filter

14. Most respondents (all but two students) do not believe that the BCAT in its current format is an effective filter for aptitude for Bar training courses. However, there also appears to be a lack of clarity on the function of the BCAT, and some measure its effectiveness based on its ability to accurately predict chances of getting pupillage. In spite of agreeing that the BCAT in its current format is not effective, most respondents believe that there is a need for a centralised regulatory filter for aptitude to enrol on a Bar training course.

Bar Council

15. The Bar Council believes that it is too soon to withdraw the BCAT as we do not know the impact of the new Bar training programme.

Providers

16. Providers believed that their admissions processes were more effective at filtering out students than the BCAT. All providers, except one (University of Law), believe that the BCAT is an unnecessary barrier that we should remove. Whilst the University of Law agrees with other providers – that the BCAT plays no significant part in a student's enrolment decision – they stated that the BCAT should be made more difficult to pass, which would make it more valuable.

Predictive value of the BCAT

17. Five (out of 17) respondents to the general consultation believe that the BCAT helps or can help students make an informed decision on whether or not to enrol on a Bar training course. Only one of the four respondents was a student, who felt that doing well on the BCAT gave them the confidence to enrol on a Bar training course. The other respondents were the Bar Council, Pearson VUE, Lincoln's Inn, and University of Law.

Bar Council

18. The Bar Council believes that the correlation between the BCAT scores and success on the BPTC, and the correlation with classification on the BPTC and the likelihood of obtaining tenancy, means that BCAT scores can help to inform students' decisions about enrolling on a Bar training course, whether or not the evidence shows that they pay attention to it. Therefore, they believed that the BCAT is a potential tool that is being underutilised.

Providers

19. University of Law believes that the BCAT could be used differently with providers deciding whether to allow onto the course students with a lower passing score. Other respondents from providers who were responding individually rather than on behalf of their university, believed that students view the BCAT as simply an additional hurdle and it does not inform their decision to enrol on a Bar training course. In our further engagement with providers, they stated that many students wait for an offer from a course provider before they sit the BCAT. Providers stated that the BCAT is not an offer condition but rather an enrolment condition and therefore does not influence their decision.

Student respondents (all of whom went on to enrol on a Bar training course)

20. 25 (out of 28) student respondents felt that the BCAT does not help students to make an informed decision on whether to enrol on a Bar training course. The 3 respondents who stated that the BCAT score did have an influence on their decision to enrol on a Bar course did well on the BCAT, which gave them confidence to pursue the Bar Course. We have not had any responses from students who were deterred from enrolling on a Bar Course following a poor BCAT score.

Equality Impact

21. 15 (out of 17) respondents to the general consultation, and seven (out of 28) respondents to the student survey believe that the BCAT does have a disproportionate impact on those from disadvantaged groups or underrepresented backgrounds. The cost of the BCAT was cited as the biggest impact on those from disadvantaged or underrepresented groups, with many stating that this cost included, not just the fee for the BCAT, but also having to take time off from work to prepare for the BCAT and to attend a test centre to sit the BCAT. Many respondents also referred to our evidence on adverse impact on race and ethnicity, stating that we should withdraw the BCAT as it serves no effective purpose. Three respondents (a law student, BPP University, and the

Bar Council) suggested that the requirement to sit an MCQ test without offering an alternative form of assessment may amount to discrimination following *The Government Legal Service v Ms T Brookes: UKEAT/0302/16/RN*. In addition, three respondents to the general consultation (1 barrister, and two law students) stated that the BCAT could have an adverse impact on those who are neurodivergent.

Neuro-divergent individual

22. One student respondent who identified as neuro-divergent stated that multiple choice examinations impact negatively on those who are neuro-divergent. They stated that as a neuro-divergent individual themselves, they know this to be true as they have struggled both with the BCAT and the litigation assessments because of this.

Bar Council

23. The Bar Council believes that a standardised test such as the BCAT promotes diversity as it is a 'context free' [free of bias] test. However, one of the participants from the Education and Training Committee of the Bar Council stated in the roundtable discussion that the test can be 'context free' only to the extent that there are no hidden barriers, such as in relation to those who are neuro-divergent, for example.

Lincoln's Inn

24. Lincoln's Inn echoed the view of the Bar Council. They believed that a standardised test promotes diversity because it places proper weight on aptitude rather than attainment so far.

Preferred Options

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

25. Of the 17 respondents, only one respondent (the Bar Council) chose this option, and they could not say whether they preferred option 1 or option 2 as they thought there was not sufficient data to enable them to make a choice. Out of 28 students responding to the student survey, two respondents preferred this option.

Option2: 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

26. Five (out of 17) respondents chose this option. Respondents included Lincoln's Inn, Pearson VUE (the BCAT supplier), the University of Law, and the Bar Council (see above). Out of 28 students responding to the student survey, 13 preferred this option.

Option 3: Withdraw the BCAT as a prerequisite for students enrolling on a Bar training course

27. 11 (out of 17) respondents chose this option. The respondents included those who responded in an individual capacity from BPP and City University, and the Legal Services Consumer Panel. Nine (out of 28) respondents to the student survey preferred this option. One additional respondent to the student survey preferred either this option or Option 2. At our engagement event with providers there were 11 providers represented (15 individuals). All providers except one were in favour of this option.

Amendments and alternative options

Pearson VUE

28. Pearson VUE believed that the predictive value of the BCAT is not being utilised by course providers in informing their decisions. They said that there is already a standardised score that could be used to support this in addition to using the cut score. They also recommended a more conservative policy on resits or requiring a longer period before a student is allowed to resit the test. They say that the score patterns suggest that many who pass after multiple attempts only just manage to do so.
29. In order to improve the effectiveness of the test as a sifting tool, Pearson VUE proposes two options for reconfiguring the test:
 - a. Rebalance the test so that there is a higher proportion of easier items at the expense of more difficult items. This will enhance the accuracy of low scores (where the cut score is) but will reduce the accuracy of higher scores (which are not currently used). If there is no interest in using the scores more extensively this would be a good option.
 - b. Add more easy items to the test and make the whole test longer. This will enhance the accuracy of easy scores without affecting the accuracy of higher scores. This would be a better option if providers wanted to use the higher scores in selection.

Other respondents

30. Besides increasing the pass score (advocated by the Bar Council and the Inns), the alternative options offered by other respondents involved addressing any risks at provider level. These included:
 - more stringent but fair admissions policies by the providers, including interviews to assess the aptitude of candidates;
 - exercising greater control over some of the course providers, to expect them to provide a better experience for students;
 - better pastoral support;
 - different teaching structures; and
 - the option to terminate the course early (a factor that would require course providers to offer far less onerous payment / termination terms).
31. However, it was the view of one course provider that the BSB should not intervene any further in the admissions processes of providers (above and beyond the existing supervisory regime) as that would run the risk of reverting to the overly close management of providers, which they believed was an unfortunate feature of the Bar training regime prior to the implementation of the Future Bar Training project.