



The Bar Council

The Bar Council's response to the Bar Standards Board's consultation on proposed amendments to the definition of Academic Legal Training and related exemptions

1. This is the response by the Bar Council to the BSB's proposals in the consultation paper, "Proposed amendments to the definition of Academic Legal Training and related exemptions" ("the proposed amendments").¹
2. The Bar Council represents approximately 18,000 barristers in England and Wales. It promotes the Bar's high quality specialist advocacy and advisory services; fair access to justice for all; the highest standards of ethics, equality, and diversity across the profession; and the development of business opportunities for barristers at home and abroad.
3. A strong and independent Bar exists to serve the public and is crucial to the administration of justice. As specialist, independent advocates, barristers enable people to uphold their legal rights and duties, often acting on behalf of the most vulnerable members of society. The Bar makes a vital contribution to the efficient operation of criminal and civil courts. It provides a pool of talented men and women from increasingly diverse backgrounds from which a significant proportion of the judiciary is drawn, on whose independence the Rule of Law and our democratic way of life depend. The Bar Council is the Approved Regulator for

¹ <https://www.barstandardsboard.org.uk/resources/bsb-launches-a-public-consultation-on-amending-the-definition-of-academic-legal-training.html>

the Bar of England and Wales. It discharges its regulatory functions through the independent Bar Standards Board.

Overview

4. For the reasons set out in detail below, the Bar Council is broadly neutral about the first proposed change and is against the other three.

5. The Bar Council considers it axiomatic that those who are allowed to call themselves barristers can demonstrate that they possess the requisite intellectual skills and abilities that the public expect to come with that title. In order to preserve public confidence in the Bar, and in order to ensure that both the interests of clients and broader interests in the effective application of the rule of law are protected, it is essential that those skill-standards are maintained in a transparent, uniform and accountable manner.

6. The Bar Council considers that the proposed amendments would:
 - (a) lower standards;
 - (b) make an assessment of standards difficult;
 - (c) transfer decisions about standards away from a central, independent and accountable arbiter (the BSB) to AETOs that are unaccountable bodies which may have vested interests in those decisions.

7. The Bar Council considers that:
 - (a) “the qualification route” must demonstrate that those completing it have obtained qualifications which show that the requirements of the Professional Service Statement are met;

- (b) the BSB should continue to require those who wish to rely on qualifications to demonstrate either a 2:2 Level 6 degree in which they have studied and passed all the Foundations of Legal Knowledge, or a 2:2 Level 6 Degree and a GDL.
- (c) the BSB should continue to make exemption decisions itself, not delegate to AETOs the power to determine “equivalence” or to make decisions about candidates on a “holistic” basis.

Question 1: Do you agree with our proposals for changing the definition of academic legal training as described above in the first key change?

8. The current definition of “academic legal training” as set out in Part 6 of the BSB Handbook is as follows:

“(a) UK degree, awarded at level 6 (or above) of the Framework for Higher Education Qualifications, by a recognised degree-awarding body and which contains the following subject content: Contract, Property Law, Tort, Criminal Law, Constitutional and Administrative Law, Equity and Trusts and the Law of the European Union; or

(b) a UK degree, awarded at level 6 (or above) of the Framework for Higher Education Qualifications, by a recognised degree-awarding body together with a degree programme or degree conversion programme (ie Graduate Diploma in Law or equivalent) which includes the following subject content: Contract, Property Law, Tort, Criminal Law, Constitutional and Administrative Law, Equity and Trusts and the Law of the European Union.”

9. As outlined above, the proposal of the BSB is to simplify the definition by removing the descriptive detail. The Bar Council agrees with this proposal to simplify the definition.

10. The Bar Council agrees with the suggestion that the requirements for academic legal training should be set out in one document (i.e. the Curriculum and Assessment Strategy), as opposed to the current position where the requirements are spread across the BSB Handbook, the Curriculum and Assessment Strategy and the Bar Qualification Manual.

11. This proposal is framed as being largely about achieving simplicity, with the objective that all the substantive requirements for academic legal training will be found in the Curriculum and Assessment Strategy. With that, the Bar Council has no issue, provided that all the requirements are actually to be found there. If other proposed changes were to be implemented, it does not seem that that objective will be achieved – if, for example, key aspects are left to the AETOs to determine or if Part 2 is removed from the Bar Qualification Manual. This ought to be provided in for any amendment.

Question 2: Do you agree with our proposal to remove Part 2 of the Bar Qualification Manual?

12. No. The Bar Council is strongly of the view that the BSB should set the qualification requirements, and retain any decision-making power regarding those qualifications, including exemptions from those qualification requirements or whether some qualifications are 'equivalent'.

13. Before setting out the reasons for that view, the following general principles apply:
 - (a) The BSB is under a statutory obligation to act in way which, so far as is reasonably practicable, is compatible with the regulatory objectives set out in s.1 Legal Services Act 2007 (see, s.28(2) of the 2007 Act).

- (b) Those objectives include the following: (i) protecting and promoting the public interest, (ii) supporting the constitutional principle of the rule of law, (iii) protecting and promoting the interests of consumers, (iv) encouraging an independent, strong, diverse and effective legal profession, and (v) promoting and maintaining adherence to the professional principles.
- (c) Standards for qualification and training have a direct impact on those objectives.
- (d) The LSB recognises this is the case. The relevant LSB Guidance² expects regulators, including the BSB, to deliver five outcomes. Those outcomes have to be considered together and not in isolation. One of the outcomes is referred to in paragraph 4 of the Consultation, but those outcomes also include requirements that *“education and training requirements focus on what an individual must know, understand and be able to do at the point of authorisation”* and that *“standards are set that find the right balance between what is required at the point of authorisation and what can be fulfilled through ongoing competency requirements”*. Competency is defined by the LSB as meaning *“the minimum skills, knowledge and behaviours that are required to satisfactorily provide authorised legal services in a manner that is compliant with existing rules and regulations of practice”*.
- (e) Those additional outcomes, and the guidance which accompanies them, recognise and make it a requirement that the BSB specifies, applies and sets *appropriate* standards. That way, the public interest is promoted, the interests of consumers are protected, and the rule of law is supported.

² LSB Guidance on regulatory arrangements for education and training issued under section 162 of the Legal Services Act 2007 (link [here](#))

- (f) It is obvious and logical that the standards fall to be set bearing in mind the characteristics of the barristers' profession and the nature of the work barristers undertake. In particular:
- (i) From day one of practice, barristers represent clients dealing with the legal problems they face and which have the potential to change their lives. Just as a member of the public would (rightly) expect a doctor to have studied and really understand medicine before being permitted to treat them, a member of the public would (and should) expect a barrister to be academically capable and really know and understand the law.
 - (ii) That is particularly important given that, unlike newly qualified solicitors or paralegals in law firms, barristers work without direct supervision.
 - (iii) The work of a barrister is academic in nature and involves the need to make quick decisions in sometimes stressful situations. That requires strong skills of analysis as well as quick and critical thinking.
 - (iv) Barristers deal with cases which involve legal complexity even at the very start of their practice. Even in the early years in practice, a barrister's work is not simple or straightforward.
 - (v) Barristers should be expected (by the public and in the public interest) to meet a high standard of legal knowledge and understanding from day one in practice. A basic understanding is not good enough.

14. Finally, the BSB is obliged by s.28(3)(a) of the 2007 Act to have regard to the principle that regulatory activities (including any regulatory change) should be: transparent, accountable, proportionate, consistent, and targeted at cases in which action is needed.

15. Turning now to the reasons why the Bar Council does not support this proposal:
 - (a) First, this Part of the Bar Qualification Manual plays a fundamental and vital role in maintaining high standards (a principle which the BSB supports) and, in turn, protecting the ordinary members of the public and their interests. It unambiguously specifies qualifications which individual candidates can be verified against and which can reliably assure that the competencies required at the academic stage have been attained.

 - (b) Secondly, the standards set by Part 2 are appropriate and ensure the regulatory objectives referred to above are met. Regulation of the academic stage of the training of barristers should be focussed on two things: (1) verifying by some transparent and reliable means that a potential barrister demonstrates good knowledge and understanding of the law; and (2) how that knowledge has been acquired. If the BSB is not willing to carry out its own verification by running its own centralised assessment (the Bar Council does not consider it should), then, as Part 2 does, the BSB has to identify some reliable assessment body whose standards can be trusted (the universities etc. through which a candidate has obtained their qualifications).

- (c) Thirdly, Part 2 is transparent and accountable in that it clearly sets out the level of qualification expected for a candidate at each stage in order to enter the barrister profession and, significantly, how an exemption from the standards expected may be obtained. Those exemptions are designed to ensure standards are maintained since, as the Manual itself sets out, exemptions will only be obtained when the individual candidate can demonstrate that their qualification is equivalent to the specified qualifications which satisfy the regulatory requirements and standards.
- (d) Fourthly, it is ultimately for the regulator to ensure that the requisite knowledge has been acquired by those entering the barrister profession. That is what the public would expect. The public would not expect a private organisation, which charges fees to the very individuals it is assessing, to decide whether those individuals meet the standard. AETOs have their own pressures, including commercial pressures, which the BSB would be most unwise to ignore. They have strong financial incentives to maximise admission, in just the same way as they have had strong financial incentives to increase their fees year-on-year to a level which, for very many, is unaffordable.
- (e) Fifthly, the true effect of the proposal to remove Part 2 is deeply concerning. It would enable someone to satisfy the academic stage of a barrister's training by holding a qualification (other than a degree) which is "equivalent" to one awarded at level 6 or above. That means a candidate could satisfy this stage by having taken a qualification akin to a GDL but without having previously obtained a degree, or by holding some qualification "equivalent" to a level 6 qualification, the

‘equivalence’ of which is judged by criteria which are not explained in the Consultation. This proposed change is fundamentally unsound:

(i) It risks lowering standards, and accordingly risks not providing sufficient protection of the public interest, bearing in mind the nature of the barrister profession (see above). There is significant merit in the combination of a degree with a post-graduate diploma. A post-graduate diploma on its own does not develop the critical thinking and analytical skills required to carry out a barrister’s work. In contrast, the discipline, rigour and critical thinking involved in undertaking a degree, as well as the maturity it develops, provide an assurance that the potential barrister has the academic competence to proceed to the next stage of the training for the profession.

(ii) It fails to meet the transparency requirement: the requirements for level 6 qualifications are well understood by those awarding degrees. The public, BSB, candidates, AETOs and employers can rely on decisions taken by regulated degree-awarding institutions about the classifications they assign to a qualification. There are no similar or reliable standards by which to assess “equivalence” to such qualifications.

(iii) The proposal is not accountable, either. It does not give detailed guidance or insight into how qualifications would be treated as “equivalent” or why they should be regarded as such.

(iv) Consistency is unlikely to be achieved in the absence of those clear criteria by which to assess ‘equivalence’.

(v) The Consultation does not identify any evidence-based reasons to suggest there is a need to lower standards in this way. A rare talent who can demonstrate competence without holding the established qualifications can, even under the current regulatory regime, seek an exemption.

16. The fundamental point is that it is for the regulator to set standards and to decide what qualifications are required for entry or to take decisions regarding the equivalence of such qualifications (or exemptions from the requirements). These are fundamental to the role of the regulator since they maintain the standards of the very profession it regulates.

Question 3: Do you agree with our proposal that Authorised Education and Training Organisations make admissions decisions based on the revised definition of academic legal training and in accordance with our guidance?

17. No. The Bar Council considers that the BSB should retain, and not delegate to AETOs, any decision-making power regarding the equivalence of qualifications or exemptions from qualification requirements.

18. As set out above, the AETOs would have an inappropriate conflict of interest. The Bar Council has a long-standing concern about the cost of the courses offered by the AETOs and the heavy burden (usually funded by debt) that that course imposes on students. Members of the Bar involved in recruitment have seen a worryingly large number of students who do not have a realistic prospect of obtaining pupillage incurring personal and familial debt to pay for the courses offered by the AETOs. The BSB has an obligation to protect prospective students

from this conflict of interest. Publication of pupillage outcomes, institution by institution, is not adequate.

19. These are not “admissions decisions”. They are decisions about qualifications – qualifications which set the standard for entry into the profession which the BSB regulates. Those decisions cannot appropriately be delegated to AETOs.
20. The renewal process for AETOs is not an appropriate way for the BSB to meet the statutory obligations and objectives referred to in the answer to question 2 above. Nor does it enable sufficiently regular monitoring or an ability to properly sanction an AETO if that AETO’s ‘qualification decisions’ do not meet the regulatory objectives of the BSB.
21. It is difficult to see how an appropriate and rigorous oversight of the kind envisaged by the BSB would involve fewer BSB resources, which is said to be one of the reasons for the proposals. This increases the Bar Council’s concerns about the proposed change and the impact it could have on proper fulfilment by the BSB of its regulatory functions in this area.
22. It is for the BSB to specify, with precision, the qualification requirements for prospective barristers to meet. That is a fundamental part of the BSB’s role, as its over-seeing regulator, the LSB, appears to recognise.

Question 4: Do you agree with our proposal to no longer require Certificates of Academic Standing?

23. No. The Bar Council continues to consider the equivalent of a British Bachelor (Honours) degree awarded at a standard at least equivalent to a lower second-

class Honours degree conferred in England and Wales should remain the minimum threshold for progressing to the vocational stage of training and is highly indicative of successful outcomes for prospective barristers.

24. The Bar Council continue to consider those without the equivalent of a British Bachelor (Honours) degree awarded at a standard at least equivalent to a lower second-class Honours degree conferred in England and Wales should only be granted a Certificate of Academic Standing in exceptional circumstances, noting that degree classification is highly indicative of successful outcomes for prospective barristers.
25. The BSB proposes removing the requirement for overseas graduates and non-graduates to obtain a Certificate of Academic Standing before starting the GDL, instead requiring Higher Education Institutions to decide who should be admitted onto the GDL in satisfaction of the academic requirements.
26. The consultation notes that a Certificate of Academic Standing must be applied for prior to the commencement of the GDL, however the current guidance requires an application for a Certificate of Academic Standing before or during the GDL, prior to the commencement of the vocational stage. The issue with this approach is that students may commence the GDL in hope of commencing the vocational stage but be refused a Certificate of Academic Standing during or upon completion of the GDL for failing to meet the required Academic Legal Training.

27. Approximately 45% of students enrolled on vocational Bar training each year are domiciled overseas. However, the majority of those domiciled overseas obtain a first degree from a UK university before enrolling on vocational training³.
28. The most recently reported academic session in 21/22, demonstrates that 80% of all students obtained a first degree from a UK university, 12% from a recognised international programme, with the remaining students obtaining their degree from overseas or an unclassified institution. Although the data is not provided in respect of the latter two, only 8% of students obtained a degree from overseas or an unclassified institution representing a maximum of 174 students in 21/22 who may have been required to obtain a Certificate of Academic Standing before commencing vocational Bar training, representing a small number of prospective students.
29. In other academic sessions, the numbers of students which may require a Certificate of Academic Standing remains low, with an average of 8.2% of students requiring a certificate across a 5-year period:

Session	%	No. of Students
18/19	9%	158
19/20	7%	118
20/21	12%	254
22/23	5%	TBC

30. In the past three academic sessions, 20/21, 21/22, and 22/23, the percentage of students achieving at least a lower second-class Bachelor (Honours) degree, or overseas equivalent awarded at a standard at least equivalent to a lower second-

³ Calculations and findings from paragraphs 25-27 supported by the Bar Standards Board. (2023). Bar Training 2023: Statistics on enrolment, results, and student progression overall. [Bar-Training-2023-Report-on-overall-trends-over-time copy.pdf](#)

class Honours degree conferred in England and Wales, was 92%, 96%, and 98% respectively, with no information being held by the BSB in respect of the remaining 8%, 4%, and 2% respectively. The BSB reports a decrease in the proportion of students commencing vocational training with a 2:2 over time.

31. Although the BSB data shows over half of all participants pass the vocational element of training irrespective of their degree classification, there is a direct correlation between the performance of a prospective barrister and their degree classification, with those achieving a first class degree performing better than those with an upper second class degree, who in turn perform better than those with a lower second class degree.
32. In respect of obtaining pupillage, the data shows that of those domiciled in the UK, 60% and more of those obtaining a first class degree obtain pupillage longer term. By contrast, less than 20% of those with a lower second class degree go on to obtain pupillage. Although the data only considers those domiciled in the UK, there is no evidence to suggest that those with overseas qualifications, awarded at an equivalent standard, who seek pupillage in England and Wales would fall outside of this data when considering degree classification either obtained in the UK, or overseas, noting the current requirement to obtain a Certificate of Academic Standing prior to the commencement of vocational training.
33. In summary the data shows:
 - (a) the number of students commencing vocational training each year with an overseas degree remains low with a 5-year average of 8.2%;
 - (b) the majority of students (95% across a 3-year average) commencing vocational training achieve a lower second-class Bachelor (Honours) degree, or overseas equivalent awarded at a standard at least equivalent

to a lower second-class Honours degree conferred in England and Wales;

- (c) in respect of successful outcomes in vocational training, those students with a first class honours degree outperform those with an upper second class degree, who in turn outperform those with a lower second class degree; and
 - (d) students with a first class honours degree are far more likely to obtain pupillage (6/10), than those with a lower second class honours degree (2/10).
34. The conclusion drawn from the data is that degree classification is highly indicative of successful outcomes for prospective barristers.
35. The Bar Council continues to consider the equivalent of a British Bachelor (Honours) degree awarded at a standard at least equivalent to a lower second-class Honours degree conferred in England and Wales should remain the minimum threshold for progressing to the vocational stage of training and is highly indicative of successful outcomes for prospective barristers.
36. The current regime provides regulatory oversight by the BSB ensuring consistent standards are applied to applications for a Certificate of Academic Standing in respect of Undergraduate and Postgraduate qualifications obtained overseas and ensures prospective candidates for vocational training have at least the equivalent of a British Bachelor (Honours) degree awarded at a standard at least equivalent to a lower second-class Honours degree conferred in England and Wales.
37. Similarly, as with Undergraduate and Postgraduate qualifications, the current regulatory regime provides regulatory oversight by the BSB ensuring consistent

standards are applied to applications for a Certificate of Academic Standing in respect of alternative qualifications and/or experience applying the criteria set out at 4.2 of the Criteria and Guidelines for a Certificate of Academic Standing above, although it is noted that this is considered “exceptional” by the BSB.

38. The Bar Council continues to consider that those without the equivalent of a British Bachelor (Honours) degree awarded at a standard at least equivalent to a lower second-class Honours degree conferred in England and Wales should only be granted a Certificate of Academic Standing in exceptional circumstances, noting that degree classification is highly indicative of successful outcomes for prospective barristers.
39. The BSB argues that removal of Certificates of Academic Standing would be both an efficiency and cost saving, thus more generally having a potential positive impact on broadening access, but pays insufficient regard to the negative effect. It is noted part of the BSB’s justification for removal of Certificates of Academic Standing is that 90% of all applications are granted. However, what is important is 10% of applications are refused, thus protecting the public from those with inappropriate qualification or experience from progressing to vocational training and potentially qualifying as barristers.
40. Whilst the Solicitors’ Regulatory Authority (“SRA”) has undertaken a review and modernisation of its educational requirements, it is noted the SRA still requires prospective solicitors to verify their UK Degree or equivalent overseas qualification via a third party contracted by the SRA prior to qualification, and therefore the BSB’s current regulatory approach is consistent with other regulators within the sector. Similarly, the SRA continues to consider those with work experience equivalent to a UK degree/equivalent qualification on a case-

by-case basis prior to qualification. The proposed does not bring the BSB into line with the SRA as suggested.

41. The removal of the requirement for a Certificate of Academic Standing presents the following potential risks:

- (a) Inconsistent application of the guidance provided to AETO's resulting in those with little prospect of success or inappropriate qualification or experience being admitted onto the GDL and potentially thereafter vocational training. This presents a further risk to equality noting the GDL, and subsequent vocational training, is a significant financial burden resulting in students becoming indebted with no real prospect of becoming a barrister. This is likely to impact those from lower to middle socioeconomic groups who are more likely to require student finance to fund such courses.
- (b) Inconsistent application of the guidance provided to AETO's resulting in those having obtained a GDL from one provider being rejected by vocational training providers for failing to meet the educational requirements on their own interpretation of the guidance. This is likely to cause a further regulatory burden on the BSB having to resolve disputes between prospective barristers and AETO vocational training providers.
- (c) Little to no regulatory oversight of the overseas qualifications or alternative qualifications or experience prospective candidates have prior to being admitted onto vocational training, creating an unmanaged risk to the public.
- (d) The BSB's approach to regulation being inconsistent with other regulators' approach to verification of overseas or alternative qualifications prior to qualification.

- (e) A reduction in confidence in providers of pupillage as to the standard and quality of overseas qualifications/alternative qualification or experience. This presents a further equality risk noting a lack of confidence in the verification of overseas qualifications/alternative qualifications or experience may impact the number of pupillages offered to such candidates, although it is noted no data currently exists to demonstrate the number of candidates with overseas qualifications/alternative qualifications or experience who go on to secure pupillage. This should be evidenced, and the impact assessed before any change is implemented.

42. The Bar Council contends that:

- (a) The requirement for a Certificate of Academic Standing should remain for those with overseas undergraduate and postgraduate degrees which should continue to be equivalent to a British Bachelor (Honours) degree awarded at a standard at least equivalent to a lower second-class Honours degree conferred in England and Wales.
- (b) The requirement for a Certificate of Academic Standing should remain for those with alternative qualifications and/or experience.
- (c) The current guidance should be amended so that those seeking to complete the GDL in satisfaction of the Academic Legal Training component for progression on to vocational training should apply for a Certificate of Academic Standing prior to commencing the GDL.
- (d) There should be no requirement for a student with a lower second-class Honours degree awarded in the UK to apply for a Certificate of Academic Standing prior to commencement of the GDL.

Question 5: Are there any potential equality impacts that you think we have not considered?

43. Yes. The placing of the onus on AETOs to determine entrance standards will mean that there is inconsistency amongst their approaches, as they are separate and distinct entities, operating with their own policies and considerations.
44. This impacts on fairness and equality which has not been properly addressed in the proposed amendments. Indeed, the oversight of the decision-making process by the AETOs has not been considered, in and of itself. The result is ironically that equality is likely to be impacted *more* detrimentally by the removal of clear objective standards.

Question 6: Is there anything else you would like to comment on in relation to these proposals?

45. Yes. The Bar is an intellectually rigorous profession. Not all those wishing to pursue a career at the Bar will ultimately succeed. However, in order to maintain public confidence for those relying on its services, and equally for those wishing to enter its ranks, it requires objective standards for qualifications. Whether an individual meets that standard, should be determined by the profession's regulator, the BSB, not by individual AETOs.
46. AETOs are permitted to be profit-making organisations and for those that are businesses, their core aim is the maximisation of profits. AETOs thus have no incentive to act as gatekeepers to entrance onto their courses, yet it ultimately reflects poorly on the members of the profession and its regulator if it permits individuals to go through the expense of studying for the Bar, when they are statistically exceptionally unlikely to secure a pupillage and a practising certificate at the end of that process.

47. The Bar course is also not an academic course that has wide application or standing outside of the profession and can be a very expensive *cul-de-sac* for students. The interests of equality and access to the profession cannot be addressed by an abrogation or lowering of qualification standards.
48. Equally, the debate on the deferral of Call is inextricably linked to whether it is appropriate for individuals to be termed 'barristers' at the conclusion of their vocational legal training, or during pupillage/at the conclusion of pupillage. This response is not the place for that debate, save that if Call remains in its current point at the conclusion of the vocational legal training, then the issues in relation to unregulated barristers and the burden their policing places on the practising profession, is only set to increase, as more individuals will be able to commence the vocational legal training stage.

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