

Research specification: the use of aptitude tests as a selection tool at different stages of professional qualification

Purpose

1. To develop our understanding of the use, effectiveness and impact of aptitude tests as a selection tool at various stages of professional qualification in legal services and other professional services sectors (both in England and Wales and internationally); and to identify the key issues that we should consider when deciding whether to approve changes to regulatory arrangements which involve the introduction of aptitude tests.

Background

2. The Legal Services Board (LSB) has been set up to reform and modernise the legal services market place in the interests of consumers, enhancing quality, ensuring value for money and improving access to justice across England and Wales. The LSB will achieve this pursuing our regulatory objectives¹ and providing regulatory oversight for the eight approved frontline regulators².
3. We have a specific duty under s.4 of Legal Services Act 2007 ('the Act') to assist in the maintenance and development of standards in relation to both the regulation of Authorised Persons (i.e. qualified lawyers in England and Wales) and the education and training of Authorised Persons. In addition, an effective education and training framework for the whole legal workforce (not just "authorised persons") is required to support the regulatory objectives, particularly:
 - RO4: protecting and promoting the interest of consumers
 - RO6: encouraging an independent, strong, diverse and effective legal profession
 - RO8: promoting and maintaining adherence to the professional principles.
4. Our Chairman set out the Board's analysis of current issues and its policy position in relation to education and training in the 2010 Lord Upjohn lecture to the Association of Law Teachers.³
5. The three largest approved regulators have announced their intention to carry out a review of education and training. The terms of reference for the review are attached at **Annex A**. Our role in relation to the review will primarily be to offer support and constructive challenge to the approved regulators. Our expectation is that the review should be broad in its scope, practical in its recommendations and informed by experience in other sectors and from beyond the UK.
6. We have also agreed to fill any gaps in terms of research and policy analysis, particularly on issues that would benefit from support at oversight regulator level. We have a statutory role in approving changes to the regulatory arrangements of approved regulators. We will therefore

¹ See section 1 of the Legal Services Act 2007 <http://www.legislation.gov.uk/ukpga/2007/29/section/1>

² The Law Society, General Council of the Bar, Council for Licensed Conveyancers, The Institute of Legal Executives, The Chartered Institute of Patent Attorneys, The Institute of Trade Mark Attorneys, Association of Law Costs Draftsmen, Master of the Faculties.

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http://www.legalservicesboard.org.uk/news_publications/speeches_presentations/2010/de lord upjohn lec.pdf

need to develop our own knowledge and capability in relation to legal education and training to ensure that we are well placed to assess proposals for change and their impact on the regulatory objectives.

7. We have identified one key area which we think would benefit from early research and analysis - the way in which aptitude tests are used as a selection tool at various stages of professional qualification, and analysis of their effectiveness and impact. The impact of such tests needs to be considered specifically in relation to the effect on competition in the legal services and legal education markets; and in relation to the diversity and socio-economic background of those selected.
8. A National Admissions Test for undergraduate law degrees, known as LNAT⁴, has been set by a consortium of eight leading UK universities as “a fair way to assess a candidate’s potential to study law at undergraduate level, regardless of their education or personal background”⁵. Various research and analysis has been carried out on student performance in LNAT⁶, and the impact of the test on widening participation objectives⁷.
9. Following the 2008 Review of the Bar Vocational Course chaired by Derek Wood QC⁸, the Bar Standards Board intends to introduce a new regulatory requirement that students should pass a Bar Aptitude Test before being accepted onto the Bar Vocational Course (now known as the Bar Professional Training Course). The Office of Fair Trading (OFT) advised the Ministry of Justice about the proposal⁹ before we assumed our statutory functions under the Legal Services Act 2007 to approve changes to the regulatory arrangements of approved regulators.
10. Significant research has been done in the United States exploring the issue of admissions tests for law and the extent to which they have the potential to predict actual lawyering performance¹⁰. In addition, the Sutton Trust has recently carried out research on whether a US-style standard attainment test (SAT) could be used as a selection tool for university admissions generally¹¹.
11. The successful bidders will need to take account of this and other relevant research in completing the project.

⁴ See <http://www.lnat.ac.uk/>

⁵ LNAT website <http://www.lnat.ac.uk/lnat-exam.aspx>

⁶ Available from the LNAT website here: <http://www.lnat.ac.uk/applying-to-law-school.aspx>

⁷ The deterrent effect of the LNAT with particular reference to issues of widening participation: a review of the evidence <http://www.lnat.ac.uk/assets/news/11/107.pdf>

⁸ Bar Standards Board Review of the Bar Vocational Course, Report of the Working Group (July 2008) <http://www.barstandardsboard.org.uk/assets/documents/BVC%20Report%20with%20annexes.pdf>

⁹ Application by the Bar Standards Board to Amend its Training Regulations: A report by the Office of Fair Trading to the Ministry of Justice on the likely competition effects of the Bar Standards Board modifying Regulation 25 of the Bar Training Regulations under Section 29 and Schedule 4 of the Courts and Legal Services Act 1990 (June 2009) http://www.offt.gov.uk/shared_offt/reports/professional_bodies/oft1086.pdf

¹⁰ Shultz, M & Sedek, S (2008) *Identification, Development, and Validation of Predictors for Successful Lawyering* http://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID1353554_code381710.pdf?abstractid=1353554&rulid=16795359&mirid=1

¹¹ Use of an aptitude test in university entrance: a validity study. Final Report <http://www.suttontrust.com/public/documents/sat-report-final.pdf>

Aims and Objectives

12. We would like to develop our understanding of existing research on the use of aptitude tests as a selection tool at various stages of professional qualification in legal services and other professional services sectors. In particular the research report should cover the following:

- A summary analysis of the use of aptitude tests – where and how they are used in the legal services and other professional services sectors in England & Wales and internationally.
- For a representative range of tests, a more detailed discussion of the following:
 - The objectives of the test, what it was seeking to measure (e.g. suitability to study an academic or vocational course, suitability/potential to enter a particular profession) and how (e.g. what skills were being tested);
 - Research undertaken to evaluate the effectiveness of the test in achieving the stated objectives;
 - The validity of such tests in terms of correlation with other information about the candidate's attainment (e.g. prior academic attainment, interview performance, subsequent academic attainment)
 - Evidence of any disproportionate impacts on candidates from different backgrounds – for example potential bias in relation to the gender, ethnicity or educational/social background;
 - Any evidence available on the longer term impact of such tests (for example whether results correlate with performance in the later stages of training or longer term on career achievement);
 - A discussion of the extent to which the relevant decision makers (e.g. educational institutions or employers) make use of the information produced by aptitude tests and the weight they give them relative to other inputs to the selection process (e.g. interviews, qualifications, candidate self-assessment)
- Based on the available research, a discussion of the key challenges identified in developing and implementing aptitude tests in the legal/professional services context that are effective in predicting future performance and are free from bias, and whether (and if so, how) these have been overcome.

Issues and scope

13. There are a number of issues that need to be considered, including:

- The extent to which research has demonstrated that aptitude tests yield valuable data to inform selection decisions which was not already available in the form of information about qualifications/academic achievement
- Whether the tests were designed to identify candidates achieving a minimum level of competence, or whether they were designed to identify and rank the best candidates (or both) – and whether they were successful in doing so.
- Whether aptitude tests are a better predictor of future attainment than prior academic achievement.

- Whether aptitude tests have been used (or could be used) to produce an effective objective assessment of a candidate's ability, eliminating disparities in prior educational attainment which may result from differences in educational opportunities available to the candidate (e.g. because of the school attended and/or the social background of the candidate).
- The extent to which aptitude tests can effectively measure the potential of candidates to develop particular skills as opposed to their actual skills at the time of the test.

Tender Evaluation Criteria

14. All projects commissioned by the LSB are subject to our standard terms of contract.

Deliverables

Output

15. The output for this research should be an executive summary together with a report. The report should be suitable for publication, although any decision to publish will remain with the LSB.
16. The researcher will also be required to run two seminars of up to two hours duration at the LSB offices during the course of the project to present emerging findings.
17. The LSB will retain ownership of the report.

Project plan

18. Tenders should include a project plan and time schedule for the work that identifies the main task and key milestones that will be used to monitor progress. The plan should be accompanied by a resource profile, giving a breakdown of the resources in person days allocated to each task.

Duration

19. The research should commence in February 2011. Tenders should set out dates for completing key milestones such as information gathering, analysis, synthesis and report writing. A draft final report should be completed and submitted to the LSB by the end of March 2011. A final agreed report should be completed by the end of April 2011.

Legal Services Board Contact Details

20. Any queries about the research specification should be addressed to:

Policy team: Michael Stacey 020 7271 0089

Research: Alex Roy 020 7271 0060

TERMS OF REFERENCE FOR THE EDUCATION AND TRAINING REVIEW TO BE UNDERTAKEN BY THE SOLICITORS REGULATION AUTHORITY, BAR STANDARDS BOARD AND ILEX PROFESSIONAL STANDARDS

The review will examine:

- The educational requirements placed upon individuals entering the sector (including programmes and pathways to professional qualification) and their regulatory function.
- The requirements for continuing education for individuals and entities (including Continuing Professional Development, accreditation and other quality assurance schemes).
- The requirements placed upon those delivering approved education to individuals and entities.

The following specific questions will be asked:

- What should be the contribution of legal education and training to the delivery of the regulatory objectives set out in the Legal Services Act 2007, taking account of:
 - the likely shape of and demands on legal services by 2020 in the light of changing consumer/client demand, technological change and other factors,
 - the effects that the shape of legal services may have upon the legal and other skills demanded from different kinds of lawyers and others employed in legal services in the future,
 - the need for high quality, competitive legal services and education and training providers and high ethical standards for lawyers and legal services entities,
 - the need to promote social mobility and diversity,
 - forthcoming changes to the education sector and how these may affect legal education and training.
- How might implementation of the Legal Services Act affect legal education and training?
- To what extent (if any) should the formal regulation of legal education and training be extended to include groups other than those regulated by the Approved Regulators—for example, paralegals?
- What can or should be done to address the issue of career development and mobility between branches of the legal profession?
- What recommendations should be made to the Legal Services Board, the approved regulators and other bodies?

The regulators plan to appoint an external research team in February 2011. This review is expected to produce significant policy findings at various points before its conclusion.