

**BAR
STANDARDS
BOARD**

REGULATING BARRISTERS

Pupillage/Work-Based Learning

Professional Ethics

Practice test

Mark scheme (including indicative content)

QUESTION: 1

APPLICATION OF KNOWLEDGE Grades: Good; **Satisfactory**; Poor; Unacceptable

<p>A satisfactory level of application of knowledge will contain evidence that the candidate understands and can apply:</p> <p>S1. Peter may be guilty of serious misconduct.</p> <p>S2. This is because his actions which Moira has witnessed may amount to either a physical or sexual assault or sexual harassment (gC96.2).</p> <p>S3. In accordance with gC97, Moira must consider carefully all of the circumstances, to ensure that she is certain of the facts.</p> <p>S4. Moira needs to take practical steps to find out what happened by speaking to Jessica and/or Peter.</p> <p>S5. If Moira concludes that Peter has committed serious misconduct she should report Peter to the BSB unless satisfied that Peter or Jessica has reported it (rC66).</p>	<p style="text-align: center;"><i>Moving upwards from satisfactory knowledge</i></p> <p>A good answer will additionally contain reference to:</p> <p>G1. Moira needs to treat Jessica sensitively and reassure her that she will be supported if she makes a claim (reference to protection against victimisation).</p> <p>G2. Peter is in a position of power which may affect Jessica's wishes as to what should be done.</p> <p>G3. Moira should invite Peter to report himself to the BSB for serious misconduct.</p> <p>G4. Moira needs to consider whether the Head of Chambers needs to be informed, whether or not she takes the view that Peter has committed serious misconduct.</p> <p>G5. Peter's actions may constitute a breach of CD5 in that public confidence in Peter and/or the profession would be diminished were members of the public to become aware of his conduct, whether it amounts to physical or sexual assault or threatening behaviour because members of the public expect barristers to behave appropriately at all times.</p> <p>G6. CD9 is engaged in respect of Moira, Peter and Jessica. They must be open and cooperative with their regulators.</p> <p>G7. If Moira concludes it is serious misconduct and then fails to report it/check someone else has reported it then Moira will be guilty of serious misconduct (gC96.8).</p>
	<p style="text-align: center;"><i>Moving downwards from satisfactory knowledge</i></p>
	<p>A poor answer will contain any or all of the following omission(s) or irrelevant/incorrect material, namely:</p>

P1. Failure to recognise Peter may have committed serious misconduct.

P2. Failure to recognise Moira should consider all of the circumstances (rC66).

P3. Failure to recognise Moira needs to take practical steps to find out more/resolve issue (i.e. speak to Jessica and possibly Peter).

P4. Failure to identify that Moira or Peter needs to report serious misconduct to BSB (if candidate has concluded that the behaviour may amount to serious misconduct).

An **unacceptable** answer may include any or all of the following:

U1. A statement that Moira should ignore what she has seen.

U2. A statement that Moira can advise Jessica to ignore/forget about what happened.

U3. A statement that because the incident took place at a party/outside of normal work Peter's conduct is a private matter/ethical duties do not apply.

SAQ1 INDICATIVE CONTENT COMFORTABLY EXCEEDING 'SATISFACTORY' ANSWER

Peter may be guilty of serious misconduct.

This is because his actions which Moira has witnessed during the party may amount to either a physical or sexual assault or sexual harassment (gC96.2).

Moira must be open and co-operative with her regulators (CD9), as must Peter and Jessica. Moira has likely witnessed an incident involving serious misconduct, so must ensure that she fully discharges her obligations.

In accordance with gC97, Moira must consider carefully all of the circumstances, to ensure that she is certain of the facts. She must therefore take steps to find out what happened, and this would include speaking with Jessica. When speaking to Jessica, she should indicate to her that Peter's actions may amount to serious misconduct which, as a barrister, she is bound to report (rC66, gC96.2). Moira should ask Jessica whether she is willing to report the apparent misconduct. Moira should reassure Jessica that barristers must not victimise anyone for making an allegation of having been sexually harassed or physically assaulted or who, having witnessed sexual harassment, makes a report in good faith (rC69).

Moira should also speak further with Peter regarding what she witnessed and seek his explanation (gC97.2). Depending on what Peter tells her, she may need to invite him to consider self-reporting his behaviour to the BSB. If Moira concludes that there are reasonable grounds to believe that Peter has committed serious misconduct and it has not to her knowledge been reported to the BSB by Peter or anyone else, then she has a duty to report his actions to the BSB (gC98). Otherwise, Moira herself will be guilty of serious misconduct (gC96.8).

Peter's actions may constitute a breach of CD5 in that public confidence in Peter and/or the profession would be diminished were members of the public to become aware of his conduct, whether it amounts to physical or sexual assault or threatening behaviour because members of the public expect barristers to behave appropriately at all times.

Moira should also consider reporting the incident to her Head of Chambers given that this was a chambers event and Peter's behaviour may amount to misconduct, even if not serious misconduct (gC102).

QUESTION: 2	
APPLICATION OF KNOWLEDGE Grades: Good; Satisfactory ; Poor; Unacceptable	
<p>A satisfactory level of application of knowledge will contain evidence that the candidate understands and can apply:</p> <p>S1. In failing to ensure she had sufficient time to properly deal with the instructions/working when overtired, Ella is in breach of CD2 and/or CD7.</p> <p>S2. In improperly disposing of Benjamin's bank statements, Ella has also breached client confidentiality (CD6; rC5; rC15.5).</p> <p>S3. Ella should have also explained to Benjamin/ her instructing solicitor what happened.</p> <p>S4. Ella must now respond to the BSB's request promptly (CD9; rC64.1).</p> <p>S5. Ella must supply to the BSB the documents requested, including the conference notes (rC64.1; gC93).</p>	<p style="text-align: center;"><i>Moving upwards from satisfactory knowledge</i></p> <p>A good answer will additionally contain reference to:</p> <p>G1. Ella has further breached CD2 and/or CD7 in that her careless disposal of the original bank statements has potentially resulted in evidence being lost.</p> <p>G2. Ella has diminished the trust and confidence that the public places in the profession, as members of the public would expect a barrister to take care of documents relating to matters in which they are instructed, especially original documentation (CD5; Confidentiality Guidance).</p> <p>G3. The potential of misleading the court (CD1), as per Jane's assertions, is not substantiated on the facts.</p> <p>G4. Ella has failed to take reasonable steps to manage her practice competently and in such way as to achieve compliance with her legal and regulatory obligations (CD10).</p> <p>G5. Ella should not have taken on more work than she was able to manage, and should have considered whether her duty under CD7 required her to inform her instructing solicitor in sufficient time to allow for appropriate steps to be taken to protect the client's interests when it became apparent that she did not have sufficient time to deal with the instructions in Benjamin's case (rC18).</p> <p>G6. The bank statements include Benjamin's personal data, and Ella has mismanaged the same. This is a GDPR/ DPA breach and Ella should report the breach to the ICO.</p> <p>G7. Having breached CD10, Ella is now under an obligation to take all reasonable steps to mitigate the effects of her breach (gC2).</p> <p>G8. Whilst the conference notes are privileged, Ella is still obliged to pass these to the BSB once they have been requested (gC93).</p>

	<p>G9. Benjamin/ the instructing solicitor should be informed of the fact that the conference notes will need to be disclosed to the BSB, but Ella should provide reassurance that the disclosure of the notes in these circumstances will not infringe Benjamin's right to privilege.</p> <p>G10. Benjamin could be advised to seek reassurance from a solicitor/ another barrister regarding the disclosure of the conference notes to the BSB, so as to avoid any perceived conflict of interest.</p>
	<p style="text-align: center;"><i>Moving downwards from satisfactory knowledge</i></p> <p>A poor answer will contain any or all of the following omission(s) or irrelevant/incorrect material, namely:</p> <p>P1. A failure to identify the application of CD2 and/or CD7 in this scenario.</p> <p>P2. A failure to identify the breach of CD6 in this scenario.</p> <p>P3. A failure to identify that Ella must comply with the BSB's request, including handing over the conference notes (CD9; rC64.1).</p> <p>An unacceptable answer may include any or all of the following:</p> <p>U1. A statement that Ella does not have to respond to the BSB's request.</p> <p>U2. A statement that Ella must not disclose the conference notes to the BSB as they are privileged.</p>

SAQ2 INDICATIVE CONTENT COMFORTABLY EXCEEDING 'SATISFACTORY' ANSWER

Ella owes Benjamin a duty to provide a competent standard of work and service (CD7) and a duty to act in his best interests (CD2). It is clear that Ella did not leave herself sufficient time to properly prepare for the hearing in Benjamin's case, resulting in her attending the hearing without having read all of the papers. This is a breach of both CD2 and CD7. There is also an argument that working on the papers when overtired is also a breach of CD2 and CD7. Further, in allowing herself to become overstretched with work in this way, Ella has failed to take reasonable steps to manage her practice competently (CD10), and must now take steps to mitigate the effects of her breach (gC2).

When it became apparent to Ella that she was not going to have sufficient time to properly deal with Benjamin's case, she should have considered whether her duty to Benjamin under CD7 required her to inform her instructing solicitor in sufficient time to allow for appropriate steps to be taken to protect Benjamin's interests, e.g. by instructing different counsel if time allowed for this (rC18).

Ella should have been more careful when tidying her desk, irrespective of how tired she was. She clearly should not have torn up the bank statements, and her careless disposal of the same amounts to a further breach of CD2 and/ or CD7, as it has potentially resulted in evidence being lost. Her actions are likely to diminish the trust and confidence which the public places in her and the profession, contrary to CD5, since members of the public would expect barristers to take care of documentation relating to the matters in which they were instructed, especially original documentation.

By tearing up the bank statements Ella made herself vulnerable to a charge of knowingly or recklessly attempting to mislead the court (rC3.1), because this was an original document and the hearing was related to the disclosure of documents. The allegation of misleading the court is not, however, substantiated on the facts of this case.

By tearing up and throwing confidential documents into the bin Ella has breached CD6, the duty to keep confidential those documents which attract legal professional privilege or are confidential (CD6, rC5 and rC15.5). Ella further failed to follow the Confidentiality Guidance (See para 1, Confidentiality Guidance). She is a data controller under the Data Protection Act 2018 and must comply with the requirements of the Act and the UK GDPR in handling and storage of confidential material (Confidentiality Guidance).

The careless disposal of bank statements amounts to an actual personal data breach. Ella must inform Benjamin and/ or the instructing solicitors as soon as possible of the personal data breach and she must also undertake a risk assessment on the ICO website/inform the Information Commissioner about the breach.

Ella must be open with the BSB as her regulator (CD9) and must provide all such

information to the BSB as it may, for the purposes of its regulatory function, from time to time require of her (rC64.1). She must respond to the BSB's request promptly (rC64.1) by sending it copies of all the requested documents. This includes the notes taken in conference with Benjamin, even though they are subject to legal privilege (gC93).

Ella should advise Benjamin and/ or the instructing solicitors that she is required to disclose the conference notes because the issue is a regulatory matter and she must comply with the requirement of her regulator. She should reassure Benjamin that disclosure of the notes in these circumstances does not infringe his right to privilege. Furthermore, she should also advise Benjamin to seek advice and reassurance from another solicitor or barrister regarding disclosure of the conference notes because, given the circumstances, Benjamin may perceive a conflict of interest regarding the disclosure of the notes. Such independent advice would serve to reassure him that Ella is simply complying with her regulatory requirements.

QUESTION: 3		
APPLICATION OF KNOWLEDGE Grades: Good; Satisfactory ; Poor; Unacceptable		
<p>A satisfactory level of application of knowledge will contain evidence that the candidate understands and can apply: that the fault is theirs, and not the clients.</p> <p>S1. By omitting to follow instructions and put Jack's case, Rohan has breached his duty to act in the best interests of his client (CD2).</p> <p>S2. This failure also means that Rohan has failed to provide a competent standard of work (CD7).</p> <p>S3. Rohan must correct the position so that the court is not misled in thinking that Jack has just made up this part of his evidence (CD1).</p> <p>S4. Rohan must correct the position without regard to his own interests (rC15.2); thus, he must ignore any repercussions that there may be for him or his reputation in these circumstances (CD4).</p> <p>S5. Rohan must also correct the position to comply with his duty to act in his client's best interests and to ensure that his client's chances of acquittal are not jeopardised.</p>	<p style="text-align: center;"><i>Moving upwards from satisfactory knowledge</i></p> <p>A good answer will additionally contain reference to:</p> <p>G1. Rohan must explain to the judge in the absence of the jury the mistake and ask to recall the witness to ensure the court is not misled and the client's best interests are served.</p> <p>G2. Rohan should also apologise to Jack for the error and remind him of chambers' complaints procedure in the event that Jack wishes to complain about his conduct of the case.</p> <p>G3. If Rohan did not correct the position this would put him in breach of CD3 as he would not be acting with honesty and integrity.</p> <p>G4. If Rohan did not correct the position this would diminish the trust and confidence the public had in him and/or the profession (CD5) because members of the public would expect barristers to remediate mistakes they had made, especially those made in court.</p>	
	<p style="text-align: center;"><i>Moving downwards from satisfactory knowledge</i></p> <p>A poor answer will contain any or all of the following omission(s) or irrelevant/incorrect material, namely:</p> <p>P1. Failure to identify that Rohan has failed to act in accordance with instructions and therefore breached his duty under CD2 and/or CD7.</p> <p>P2. Failure to recognise either that Rohan must correct the position or that he must not allow the court to be misled (CD1).</p> <p>An unacceptable answer may include any or all of the following:</p> <p>U1. A statement that Rohan does not need to correct the position.</p> <p>U2. A statement that Rohan can blame Jack or his instructing solicitor for the mistake.</p>	

SAQ3 INDICATIVE CONTENT COMFORTABLY EXCEEDING 'SATISFACTORY' ANSWER

Rohan has a duty to act in the best interests of each client (CD2) and to provide a competent standard of work and service (CD7). By omitting to put Jack's case fully, Rohan has breached both of these duties, because his omission has led to the inaccurate impression that Jack's evidence about the assailant's description is a recent fabrication, which is clearly not in Jack's best interests and falls below a competent standard of work and service.

Rohan was aware of Jack's instructions as to the description of the assailant in advance of the trial before he cross-examined the prosecution witnesses. He should have put the case fully to each witness, insofar as it was relevant, that a short, dark-haired male committed the assault.

Rohan must be honest and must not mislead the court (CD1 and CD3). This duty includes correcting the position to ensure that the court is not misled (CD1 and rC3.1). By correcting the position, Rohan will ensure that the administration of justice is not jeopardised by the court wrongly drawing an adverse inference from Jack's 'late' evidence about the description of the assailant. Equally, Rohan will ensure that Jack's chances of being acquitted are not jeopardised.

Rohan must do so, without regard to his own interests (rC15.2); thus, he must ignore any repercussions that there may be for him or his reputation in these circumstances (CD4).

In practical terms, Rohan should correct the position by explaining the position to the judge. This should first be in the absence of the jury and then in an acceptable format in front of the jury. Rohan should emphasise that the failure is in no way Jack's responsibility. Rohan should ask the judge to permit the witnesses, who gave evidence relevant to this point, to be recalled so that the description of the assailant can be put.

Rohan should also apologise to Jack for the error and remind him of the chambers complaints procedure in the event that Jack wishes to complain about his conduct of the case.

If Rohan did not correct the position this would diminish the trust and confidence the public had in the profession (CD5) and would also be a breach of CD3, the duty to act with honesty and with integrity.

QUESTION: 4	
APPLICATION OF KNOWLEDGE Grades: Good; Satisfactory ; Poor; Unacceptable	
<p>A satisfactory level of application of knowledge will contain evidence that the candidate understands and can apply:</p> <p>S1. Callie owes a duty to the court (CD1) and must not knowingly or recklessly mislead the court (rC3).</p> <p>S2. Callie's duty to the court overrides her duty to act in Harry's best interests (CD2; rC4; rC16).</p> <p>S3. The allegation that Della forged Harry's signature is an allegation of fraud, and Callie must have both Harry's clear instructions to plead fraud and reasonably credible material that establishes an arguable case of fraud (CD3; rC9.2c).</p> <p>S4. Callie must refuse to plead the allegation of fraud as she does not have reasonably credible material establishing an arguable case of fraud and explain to Harry her reasons for not being able to do so.</p> <p>S5. There appears to be some evidence to support the allegation that Della was working for another producer, and since Harry has instructed Callie to do so, she should include this allegation in the defence (CD2; CD7).</p> <p>S6. Unless Callie is authorised to conduct litigation, she cannot file and serve the defence on behalf of Harry (Conducting Litigation Guidance, para 5).</p> <p>S7. If Harry continues to insist that Callie plead the fraud allegation, she must cease to act (rC21.5; rC21.6; rC25).</p>	<p style="text-align: center;"><i>Moving upwards from satisfactory knowledge</i></p> <p>A good answer will additionally contain reference to:</p> <p>G1. Callie must also act with honesty and integrity (CD3).</p> <p>G2. To plead fraud without reasonably credible material is likely to diminish the trust and confidence that the public places in the profession, since members of the public would not expect barristers to plead serious allegations in absence of any evidence in support (CD5).</p> <p>G3. That this is public access work does not make a difference to the position regarding pleading fraud.</p> <p>G4. Callie does have clear instructions from the client to plead the fraud allegation, but this is not enough in itself to satisfy rC9.2c.</p> <p>G5. Callie will need to explain to Harry that he will need to file and serve the defence himself or arrange for someone else to do it on his behalf, and will need to make sure that Harry is aware of the deadline for doing so and the consequences of failing to file and serve within the time specified by the court (CD2; CD7).</p> <p>G6. If Harry is frequently out of the country on business, then Callie may need to consider whether it is in Harry's best interests for Harry to instruct a professional client/ other alternative representation who are capable of conducting litigation on his behalf (rC123; rC17).</p> <p>G7. If Callie forms the view that it would be in Harry's best interests to instruct a professional client, she must inform him of this, and withdraw from the case unless Harry does so (rC123; rC21.6; rC25).</p> <p>G8. In the event that Callie is required to cease to act, she must either obtain Harry's consent to do so, or clearly explain to Harry her reasons for doing so (rC27).</p>

Moving downwards from satisfactory knowledge

A **poor** answer will contain any or all of the following omission(s) or irrelevant/incorrect material, namely:

P1. A failure to identify the applicability of CD1.

P2. A failure to recognise either that Callie is being asked to plead fraud or that she must refuse to plead the allegation of fraud.

P3. A failure to identify that filing and serving the defence amounts to conducting litigation.

An **unacceptable** answer may include any or all of the following:

U1. A statement that Callie can plead the fraud allegation despite the absence of reasonably credible material.

U2. A statement that Callie can file and serve the defence on behalf of Harry without any recognition of the need to be authorised to conduct litigation.

SAQ4 INDICATIVE CONTENT COMFORTABLY EXCEEDING 'SATISFACTORY' ANSWER

Callie owes a duty to act in the best interests of Harry (CD2). However, she must also have regard to her duty to the Court in the administration of justice (CD1) and her duty to act with honesty and integrity (CD3), both of which take precedence over her duty to Harry (rC4; rC16).

Harry's instructions to plead forgery within his defence to Della's claim amount to making an allegation of fraud. Callie must not knowingly or recklessly mislead the court (rC3). She must not draft any statement of case containing an allegation of fraud unless she has both Harry's clear instructions to do so and reasonably credible material which establishes an arguable case of fraud (rC9.2.c). While Callie has Harry's clear instructions on the matter, there does not appear to be any reasonably credible material establishing an arguable case of fraud in this instance. So, while Callie does not have to believe Harry (gC6), in these circumstances it would be a breach of CD1 and CD3 to draft Harry's defence on the basis of his instructions without further material. This is particularly so given some of his comments. Further, to plead fraud as Harry has asked without reasonably credible material is likely to diminish the trust and confidence that the public places in the profession (CD5) since members of the public would expect barristers not to plead serious allegations where the evidence does not support such a course of action.

Callie must therefore refuse to plead the allegation of fraud, and should explain to Harry the reason for refusing to do so, with reference to her obligations under the Code. If Harry insists on her pleading the allegation without reasonably credible material, and despite her advice, she would have to return her instructions. This is because Harry's instructions would seek to limit her ordinary authority or discretion as to the conduct of proceedings in court and/ or require Callie to act other than in accordance with the provisions of the Handbook (rC21.5; rC21.6; rC25). In returning the instructions Callie would need to either obtain Harry's consent, or clearly explain her reasons for doing so (rC27).

With regard to the allegation relating to Della working for another producer in breach of the agreement, there does appear to be some evidence to support this allegation. In light of this, and in light of Harry's instructions to do so, Callie should include this allegation in the defence (CD2; CD7).

Finally, while Callie is authorised to undertake public access work, this is not akin to conducting litigation. The filing and serving of documents such as a defence would amount to the conduct of litigation (Conducting Litigation Guidance, para 5). As such, unless Callie is also authorised to conduct litigation, then she will not be able to do as Harry has asked in this regard. She must explain to Harry why this is the case, and ensure that he understands that he will either need to file and serve the defence himself, or arrange for another person to do so on his behalf. Callie should take care to make clear the deadline for doing so, and the consequences of failing to file and serve within the time specified by the court. If Harry is frequently out of the country on

business, Callie may also need to consider whether it would be in Harry's best interests to instruct a professional client/other alternative representation who are capable of conducting litigation on his behalf (rC123; rC17). If Callie is of the opinion that it would be in Harry's best interests to do so, then she must inform Harry of her view and withdraw from the case unless Harry instructs a professional client (rC123; rC25).

QUESTION: 5		
APPLICATION OF KNOWLEDGE Grades: Good; Satisfactory ; Poor; Unacceptable		
<p>A satisfactory level of application of knowledge will contain evidence that the candidate understands and can apply:</p> <p>S1. Ismail may be entitled to cease to act on the basis that he has not received payment in accordance with the terms agreed (rC26.5).</p> <p>S2. However, rC26.5 requires Ismail to give reasonable notice to Audrey requiring the non-payment to be remedied.</p> <p>S3. As Ismail is conducting litigation on behalf of Audrey, he would also need to either get Audrey's consent to his ceasing to act, or make a successful application to come off the record before withdrawing (rC26.5; rC26.7).</p> <p>S4. Although the fees for the drafting and negotiation have been overdue for three weeks, Ismail has only just raised the non-payment with Audrey at court. This is not 'reasonable notice' for the purposes of rC26.5.</p> <p>S5. Further, in deciding whether to cease to act, Ismail should ensure that Audrey is not adversely affected because there is insufficient time to engage other adequate legal representation (gC83). This is likely to be the case here since the hearing is the following day.</p> <p>S6. In the circumstances, to comply with CD2 Ismail should continue to represent Audrey at the hearing tomorrow.</p>	<p style="text-align: center;"><i>Moving upwards from satisfactory knowledge</i></p> <p>A good answer will additionally contain reference to:</p> <p>G1. The application of CD1 and recognition that if the client is unrepresented, the case may have to be adjourned.</p> <p>G2. Ismail should remind Audrey of the terms of engagement as set out in the client care letter (rC125.1; rC125.7), since she appears to have a different understanding as to when the payment in respect of the hearing will fall due.</p> <p>G3. Ismail should ensure that he treats Audrey with courtesy and consideration when explaining to her the position in relation to his fees (gC38).</p> <p>G4. As Ismail is instructed on a public access basis, he should be particularly aware of the difficulties that Audrey might face in the event that he withdraws, particularly as there is a hearing that is imminent (Public Access Guidance for Barristers).</p> <p>G5. The trial relating to damages is due to take place the following morning and regardless of the issue relating to his fees, Ismail must continue to ensure that he acts in Audrey's best interests and/ or provides a competent standard of work and service when representing her at the trial (CD2; CD7).</p>	
	<p style="text-align: center;"><i>Moving downwards from satisfactory knowledge</i></p> <p>A poor answer will contain any or all of the following omission(s) or irrelevant/incorrect material, namely:</p> <p>P1. Failure to identify that Ismail may only withdraw for non-payment if he has given reasonable notice (rC26.5).</p> <p>P2. Failure to recognise that since Ismail is conducting litigation, he must also comply with rC26.7, by obtaining Audrey's consent or successfully</p>	

applying to the Court to come off the record.

P3. Failure to identify the applicability of CD2 in that Ismail should continue to represent Audrey at the hearing tomorrow.

An **unacceptable** answer may include any or all of the following:

U1. A statement that Ismail must withdraw in these circumstances.

SAQ5 INDICATIVE CONTENT COMFORTABLY EXCEEDING 'SATISFACTORY' ANSWER

Ismail should remind Audrey of the terms of engagement set out in the client care letter as it appears that Audrey has a different understanding as to when the payment in respect of the hearing will fall due (rC125.1; rC125.7). Ismail must ensure that he treats Audrey with courtesy and consideration when explaining to her the position in relation to his fees (gC38).

Ismail would be entitled to consider ceasing to act because he has not received payment when due in accordance with the terms agreed (rC26.5). However, under rC26.5, Ismail is required to give Audrey reasonable notice when requiring the non-payment to be remediated (rC26.5). As the trial relating to damages is due to take place the following morning, Ismail must ensure that Audrey is not adversely affected as he still has a duty to act in the best interests of Audrey and to provide a competent standard of work and service (CD2, CD7). Given that the hearing is tomorrow, there is unlikely now to be time for Audrey to engage alternate adequate legal representation (gC83). CD1 would also be engaged here, since it is likely that if Audrey were unrepresented at the hearing, the hearing would need to be adjourned. Furthermore, although the fees for the drafting and negotiation have been overdue for three weeks, Ismail has only just raised the non-payment with Audrey at court. This is not 'reasonable notice' for the purposes of rC26.5.

Lastly, as Ismail is conducting litigation on behalf of Audrey, he would also need either to get her consent to his ceasing to act, or make a successful application to come off the record, before he would be entitled to withdraw under rC26.5 (rC26.5; rC26.7).

As a result of the matters set out above, Ismail should continue to act for Audrey at the hearing tomorrow in order to comply with the duty to act in her best interests (CD2).

QUESTION: 6	
APPLICATION OF KNOWLEDGE Grades: Good; Satisfactory ; Poor; Unacceptable	
<p>A satisfactory level of application of knowledge will contain evidence that the candidate understands and can apply:</p> <p>S1. William is vulnerable because of his age and learning disability.</p> <p>S2. Raheem’s behaviour towards William was unacceptable. Raheem must explain, in terms William can understand, the need for the adjournment and that the standard practice would be for Kylie to give evidence in person (gC38.2).</p> <p>S3. Raheem needs to explain to the solicitor that Williams’s interests take precedence over the solicitor’s interests/views and must not let the fact that chambers receives a significant volume of work from that solicitor/any impact on the solicitor influence his conduct of the case (CD4).</p> <p>S4. To comply with the duty to act in the best interests of his lay client, William, Raheem should ask for an adjournment (CD2).</p> <p>S5. In doing so, Raheem should truthfully explain the witness’s absence to the court (making clear the lay client is not at fault) in accordance with CDs 1, 2, 3, 4 and 7.</p>	<p style="text-align: center;"><i>Moving upwards from satisfactory knowledge</i></p> <p>A good answer will additionally contain reference to:</p> <p>G1. William’s best interests take precedence over those of the professional client, the instructing solicitor, Stuart (gC36).</p> <p>G2 Raheem should get the solicitor to check the availability of the witness, Kylie.</p> <p>G3. Raheem should speak to William in the presence of Maxine as the appropriate adult.</p> <p>G4. Raheem’s behaviour towards William is likely a breach of CD5 given the public would expect clients especially vulnerable clients to be treated with courtesy and respect.</p> <p>G5. If Raheem is acting in the best interests of his client and maintaining his independence he may consider whether William’s interests would be better served by a change of solicitor (rC17).</p>
	<p style="text-align: center;"><i>Moving downwards from satisfactory knowledge</i></p> <p>A poor answer will contain any or all of the following omission(s) or irrelevant/incorrect material, namely:</p> <p>P1. A failure to identify the application of CD4.</p> <p>P2. A failure to identify that Raheem must ask for an adjournment in accordance with his duty to William under CD2.</p> <p>An unacceptable answer may include any or all of the following:</p> <p>U1. A statement that Raheem should proceed with the trial without making an application for an adjournment.</p>

SAQ6 INDICATIVE CONTENT COMFORTABLY EXCEEDING 'SATISFACTORY' ANSWER

Raheem must act in the best interests of his lay client, William, as required by CD2. William's best interests take precedence over those of the professional client, the instructing solicitor, Stuart (gC36).

William is vulnerable because of his age and learning disability so, in order to ensure Raheem protects and promotes his best interests (CD2) and provides a competent standard of work and service (CD7) he must do what he reasonably can in terms William can understand (gC38.2) to advise William and to explain the court process and procedure. This will ensure William knows what is expected from him and from the court as he will not be familiar with legal proceedings and may find this difficult and stressful (gC41).

Therefore Raheem's response to William's suggestion is particularly inappropriate given his vulnerability and his lack of experience of the system. Raheem must apologise and take time to explain the situation to William even if that means asking for time from the court before the case is called on.

Raheem's behaviour towards William is likely a breach of CD5 given the public would expect clients especially vulnerable clients to be treated with courtesy and respect.

Kylie, a key defence witness, has not attended because Raheem's instructing solicitor did not warn her to attend. Whatever the professional client's views are, it is in William's best interests that she gives evidence in the trial as her account is important. Raheem must explain this to Stuart. As it is not William's fault that Kylie has not attended Raheem must explain to Stuart and William that he will need to apply to adjourn the case so she can attend as it is in William's best interests she is present to give evidence and that she is too far away to come today.

QUESTION: 7		
APPLICATION OF KNOWLEDGE Grades: Good; Satisfactory ; Poor; Unacceptable		
<p>A satisfactory level of application of knowledge will contain evidence that the candidate understands and can apply:</p> <p>S1. Matt must act in Simon’s best interests and provide a competent standard of work and service, and it appears having Florence as a witness would be in Simon’s best interests (CD2 and CD7).</p> <p>S2. Matt should take a statement from Florence. He is permitted to take the witness/ clarification statement, and it is in Simon's best interests to do so (Investigating and Collecting Evidence and Taking Witness Statements Guidance).</p> <p>S3. However, Matt may not prompt Florence about what happened when taking the witness statement as this would amount to coaching the witness (CD3, rC9.4).</p> <p>S4. Matt must not go through the questions which may be asked of her in court as this would also be coaching/rehearsing the witness (CD3, rC9.4).</p> <p>S5. Matt is permitted to explain the court procedure to Florence and should do so as she is new to the process and vulnerable.</p>	<p style="text-align: center;"><i>Moving upwards from satisfactory knowledge</i></p> <p>A good answer will additionally contain reference to:</p> <p>G1. Matt could ensure that the Witness Service arrange for Florence to see the courtroom so that she can familiarise herself with it.</p> <p>G2. As Florence is elderly and vulnerable, Matt must reassure her and treat her sensitively.</p> <p>G3. Matt may want to consider whether special measures directions may be required (albeit this is the day of trial).</p> <p>G4. Matt must ensure that he does not ask closed or leading questions so as to avoid influencing the evidence Florence will provide in her statement (rC9.3)</p> <p>G5. Coaching/rehearsing the witness would be a breach of CD5.</p>	
	<p style="text-align: center;"><i>Moving downwards from satisfactory knowledge</i></p> <p>A poor answer will contain any or all of the following omission(s) or irrelevant/incorrect material, namely:</p> <p>P1. A failure to recognise that the witness statement should be taken as Florence's evidence is likely to be helpful to Simon (CD2 and/or CD7).</p> <p>P2. A statement that Matt cannot take the witness statement from Florence.</p> <p>P3. A statement that Matt cannot explain the trial process to Florence.</p> <p>An unacceptable answer may include any or all of the following: U1. A statement that the barrister may coach, rehearse or practice the evidence with the witness, amounting to a breach of CD3. i.e either that Matt can prompt Florence or can go through likely questions.</p>	

SAQ7 INDICATIVE CONTENT COMFORTABLY EXCEEDING SATISFACTORY ANSWER

Matt must act in the best interests of his lay client, Simon, so when dealing with a defence witness such as Florence he must do his best to obtain sufficient relevant evidence so that he can make an informed choice as to what use, if any, that evidence will be in presenting Simon's case. One such choice is if he should call her at all.

Matt finds that Florence's statement is limited, but Simon believes she can give relevant and admissible evidence that would assist Matt to present his case properly.

There is no prohibition on Matt taking a further statement or proof of evidence from Florence (Investigating and Collecting Evidence and Taking Witness Statements Guidance). He can also clarify issues with her, but he needs to consider how he approaches his task as he must act with honesty and integrity (CD3) and guard against prompting, coaching or asking questions that are closed and leading (rC9.4). If he were to rehearse the questions he will ask or practise testing the evidence with her as she has suggested this would be a breach of CD3. He must not encourage Florence to give evidence which is misleading or untruthful (rC9.3 & rC9.4) as this will mislead the court. If Matt were to coach or rehearse Florence, this would also amount to a breach of CD5 as public confidence in Matt and the profession would be diminished if members of the public discovered that Matt had failed to act with honesty and with integrity by coaching a witness.

As Florence is a nervous witness and vulnerable because of her age Matt should put her at ease by explaining the process of the trial, explaining how she can refresh her memory from her statement and he could arrange for her to see the courtroom, or ask for the assistance of witness service, who deal with both prosecution and defence witnesses at court.

QUESTION: 8		
APPLICATION OF KNOWLEDGE Grades: Good; Satisfactory ; Poor; Unacceptable		
<p>A satisfactory level of application of knowledge will contain evidence that the candidate understands and can apply:</p> <p>S1. Patrick has breached CD2 and CD7 by failing to make the applications.</p> <p>S2 He had the opportunity to rectify matters almost immediately by informing his opponents and returning to court. He should have done this.</p> <p>S3. He should not have allowed his personal opinion of the prosecution or his embarrassment to influence his decision not to correct his mistake (CD4).</p> <p>S4. Patrick has lied to his clients about the orders in an email and that is a breach of his duty to act with honesty and with integrity (CD3).</p> <p>S5. By being dishonest, Patrick has likely committed serious misconduct (gC96.1).</p> <p>S6. Patrick should now contact the client and tell them the truth about the failure to apply for the orders.</p>	<p style="text-align: center;"><i>Moving upwards from satisfactory knowledge</i></p> <p>A good answer will additionally contain reference to:</p> <p>G1. Patrick’s actions in lying to the client are likely to diminish the trust and confidence that the public places in the profession (CD5).</p> <p>G2. Patrick should report himself to the BSB for the serious misconduct (rC65.7)</p> <p>G3. There is still an opportunity under the slip rule to have a further hearing to deal with the application for forfeiture and costs provided Patrick is honest with his client.</p> <p>G4. In raising the matter before leaving the court, and asking for it to be dealt with there and then, Patrick could have avoided the need for a further hearing, and thus avoided wasting the court’s time/ incurring further cost (gC38 and Cd7)</p> <p>G5. Patrick will need to provide the client with details of chambers’ complaints procedure.</p> <p>G5. Patrick should have contacted his client immediately and informed them of the court result in accordance with CD7.</p>	
	<p style="text-align: center;"><i>Moving downwards from satisfactory knowledge</i></p> <p>A poor answer will contain any or all of the following omission(s) or irrelevant/incorrect material, namely:</p> <p>P1. A failure to identify the applicability of either CD2 or CD7 in that Patrick has breached these duties by not making the applications in the first place.</p> <p>P2. A failure to apply CD4 in this scenario in that his personal opinion and/or embarrassment should not have influenced Patrick in failing to return to court to correct the position.</p> <p>P3. A failure to identify that there has been a breach of CD3 (lying to the</p>	

client).

P4. A failure to identify that Patrick's dishonesty may amount to serious misconduct.

P5. A failure to identify that Patrick must now take steps to rectify his breach (contacting the client to tell them the truth about the failure to apply for the orders).

An **unacceptable** answer may include any or all of the following:

U1. A statement that it was acceptable for Patrick to lie to his client to cover his mistake.

U2. A statement that there is no need to self-report to the BSB for serious misconduct.

SAQ8 INDICATIVE CONTENT COMFORTABLY EXCEEDING SATISFACTORY ANSWER

Patrick has a duty under CD2, to act in his client's best interests, and CD7, to provide a competent standard of work and service. Patrick should have applied for a forfeiture order and costs but failed to do so. He has therefore breached CD2 and CD7. Patrick has a duty to take reasonable steps to mitigate any breaches of the handbook and to do so regardless of the consequences to himself (rC15.2). He should have taken steps to remediate the breaches by letting the court and his opponents know as soon as he realised his mistake and certainly before the parties left the court building.

Patrick should not have let his personal opinion regarding the impact on Roger and Fishers to have influenced his behaviour, nor should he have let his feelings of embarrassment influence him (CD4).

Patrick has compounded matters by lying to his client and this is a clear breach of CD3 because this duty means that he should act with honesty and with integrity at all times and should not knowingly mislead anyone, and this includes his client.

Patrick has likely committed serious misconduct (gC96.1); he should therefore report himself to the BSB (rC65.7)

Lying to a client would also be breach of CD5 because the public expects barristers to be honest and to act with integrity towards everyone and this includes their clients.

Patrick should contact the local authority and tell the truth about his failures to apply for the forfeiture and costs orders. There is still an opportunity to deal with the matter under the slip rule although, had he corrected matters at the time, this would have avoided incurring unnecessary costs which he should have done in order to comply fully with CD7 (gC38).

Patrick should also explain the complaints procedure to the local authority.

QUESTION: 9**APPLICATION OF KNOWLEDGE** Grades: Good; **Satisfactory**; Poor; Unacceptable

A **satisfactory** level of application of knowledge will contain evidence that the candidate understands and can apply:

S1. The Cab Rank Rule applies in this scenario, as Sukhvinder is self-employed, the instructions come from a solicitor, and she is competent to handle the matter.

S2. Sukhvinder is also available to conduct the case.

S3. She must ensure that her independence is maintained in respect of these instructions (CD4).

S4. While the facts of the case may be objectionable to her and her local community, this is not a permitted reason to refuse the instructions.

S5. Sukhvinder's primary duty is to the administration of justice, therefore she must disregard the views of her local community and any action that the Gurdwara may take if she accepts the brief.

S6. It is of no relevance that the solicitors have not instructed Sukhvinder before.

Moving upwards from satisfactory knowledge

A **good** answer will additionally contain reference to:

G1. As this is a case which is legally aided, there is no credit risk as the payment to Sukhvinder will come from the Legal Aid Agency directly.

G2. RC15 applies - Sukhvinder must promote fearlessly the client's best interests without regard to her own interests or consequences for acting for the defendant in this matter.

G3. Sukhvinder must ensure that she does not breach CD8 and discriminate against the defendant because of his ethnicity.

G4. CD3 may be breached if Sukhvinder were to pay heed to outside pressures as she would not be acting with integrity.

G5. In respect of Sukhvinder's management committee position, she may consider whether that position may mean she could not maintain her independence pursuant to rc21.10, however, the reasons set out in this scenario do not give rise to a conflict of interests.

Moving downwards from satisfactory knowledge

A **poor** answer will contain any or all of the following omission(s) or irrelevant/incorrect material, namely:

P1. A statement that Sukhvinder's personal views or positions on the management committees amount to a conflict of interests.

P2. A statement that legal aid is not a proper fee.

P3. A statement that Sukhvinder should take into account that she has not been instructed by this firm before in deciding whether or not to accept the instructions.

An **unacceptable** answer may include any or all of the following:

U1. A failure to recognise that the Cab Rank Rule applies.

SAQ9 INDICATIVE CONTENT COMFORTABLY EXCEEDING 'SATISFACTORY' ANSWER

Sukhvinder is duty bound under the Cab Rank Rule to accept these instructions. rC29 applies in this case because Sukhvinder is a self-employed barrister, these instructions come from a solicitor and she is competent and available to deal with the matter.

While the facts of the case and/or the perceived views of the defendant may be objectionable to her and her local community, this is not a permitted reason to refuse the instructions. rC28 requires that a barrister must not withhold their services on the grounds that the nature of the case is objectionable to them or any section of the public.

The fear that Sukhvinder may be removed from the Gurdwara's management committees does not amount to a conflict of interests as envisaged under rC21, as this is not a personal interest which would conflict with the client's interests.

Sukhvinder should disregard the views of her community and any potential impact which her representation of the defendant may have on her relationship with members of her community. Under rC15, she must ensure that she promotes her client's best interests fearlessly and without regard to her own interests or any consequences for acting for the defendant.

If Sukhvinder were to refuse the brief, she may find that she would be at risk of breaching CD8 in that she could be perceived to be discriminating against the defendant because of his ethnicity. She may also be in breach of CD3 if she were to heed outside pressures into not accepting the instructions when she is required to do so as her actions would lack integrity.

Accordingly, Sukhvinder is not permitted to refuse these instructions.

It is of no relevance that this firm of solicitors has not instructed Sukhvinder before and therefore she should not allow this to be a factor in determining whether she should accept the brief. Furthermore, Sukhvinder could not suggest that because she does not know the firm, there may be a credit risk which would allow her to refuse the instructions as this is a case which is legally aided; there would be no credit risk as the payment to Sukhvinder will come from the Legal Aid Agency directly.

QUESTION: 10		
APPLICATION OF KNOWLEDGE Grades: Good; Satisfactory ; Poor; Unacceptable		
<p>A satisfactory level of application of knowledge will contain evidence that the candidate understands and can apply:</p> <p>S1. You must maintain your independence at all times (CD4) - this includes not doing anything which could reasonably be seen by the public to undermine your independence (rC8).</p> <p>S2. You should bear in mind that the giving or receiving of entertainment at a disproportionate level should not be offered or accepted if it would lead others reasonably to think independence had been compromised (gC20).</p> <p>S3. A gift, unless of modest value, can be seen to compromise a barrister's independence. Lunch could be acceptable if it is of low value and at the end of the case and proportionate to the work completed but in applying your professional judgement you should have declined the lunch if it may have led others to believe that your independence has been compromised (gC19).</p> <p>S4. An expensive gift such as the watch should be refused as it is of high value and is not proportionate to the value of the work which you have undertaken and may lead others to form the view that your independence had been compromised (gC19).</p> <p>S5. You should not accept the offer to use the villa, as this could reasonably be seen by the public to undermine your independence. Even though the case has concluded this is potentially high value</p>	<p style="text-align: center;"><i>Moving upwards from satisfactory knowledge</i></p> <p>A good answer will additionally contain reference to:</p> <p>G1. When considering CD4 in the context of this scenario the status / media interest in the client means that there is a strong possibility that the public could perceive accepting lunch in a high profile restaurant amounts to a failure to maintain independence. You ought to have been more circumspect in making the decision as to whether to go for lunch and to allow the client to pay.</p> <p>G2. In deciding whether to accept the gift, you/a barrister must use his/her judgment considering: the value of the gift / the stage of proceedings / the circumstances of the gift. Although the case in this scenario has concluded, the duty is ongoing.</p> <p>G3. Public confidence would be diminished if a barrister was seen to accept disproportionately generous gifts. The acceptance of an expensive watch and a villa holiday would not (given this is a magistrates' court trial) be proportionate to the level of work and service provided.</p>	
	<p style="text-align: center;"><i>Moving downwards from satisfactory knowledge</i></p> <p>A poor answer will contain any or all of the following omission(s) or irrelevant/incorrect material, namely:</p> <p>P1. A failure to identify that accepting gifts or entertainment of high values may be perceived as compromising independence (CD4).</p> <p>P2. A failure to identify that accepting gifts and entertainment of high values may cause a diminution in public confidence in the profession and/or the barrister as it may lead others to believe and/or perceive your independence has been compromised (CD5).</p> <p>P3. A failure to comment on whether it was right or not to let the client pay for lunch.</p> <p>An unacceptable answer may include any or all of the following:</p> <p>U1. A statement that the watch and holiday can be accepted without</p>	

entertainment, and because of the client's public status the public might consider your independence had been compromised (gC20).

S6. CD5 is engaged when a barrister is offered gifts or entertainment of high value.

appropriate/exceptional justification.

SAQ10 INDICATIVE CONTENT COMFORTABLY EXCEEDING 'SATISFACTORY' ANSWER

The barrister must maintain his/her independence under CD4. This includes the perception that his/her independence has not been compromised (rC8).

The relevant facts that need to be considered are:

- the celebratory lunch itself;
- the client paying for the lunch;
- the designer watch received the following day; and
- the offer of the use of the villa.

CD5 is important here as the barrister needs to consider whether the trust and confidence held by members of the public in him/her and the profession would be diminished by the perception that would be created by the acceptance of these gifts.

While it is permitted under the Handbook for a barrister to accept a gift of modest value, regard should be had to the impression that may be formed in the circumstances.

This is a privately paying client, and therefore a lunch paid for by the client may be considered proportionate and reasonable in the circumstances, especially given the high-stakes nature of the case (given that the client is a well-known personality), the client's means, and the fact that she was acquitted.

The same cannot be said with regard to the designer watch: given that its value will be significant it may lead others to think the barrister's independence may be compromised.

In addition, a difficulty arises in relation to the offer of entertainment namely the use of the client's villa. While the cost of the holiday itself may be low, given that this is Simone's villa in Santorini, having regard to the circumstances, accepting this gift may lead others to think the barrister's independence has been compromised. It may also place him/her in a position where he/she feels obliged to accede to a request made by Simone at a later stage because of the extent of the gift in these circumstances, this same principle applying in respect of the watch.

Accordingly, the barrister should refuse both the watch and the offer to use Simone's villa, regardless of whether she may be offended.

In declining the gift, the barrister should treat Simone with courtesy and consideration.

The barrister should also have regard to the impression that may be formed, especially given the high level of media attention that the case has had. The issue of public perception is particularly relevant here, especially given that it may be likely that a

photograph could have been taken of the barrister having lunch with Simone following the case. The tabloid media may present this in such a way that it undermines the barrister or the trust and confidence that the public hold in the profession (CD5).

Accordingly, the barrister may have formed the view that he/she should not have allowed Simone to pay for the lunch, or even attended the lunch in the first place.

QUESTION: 11

APPLICATION OF KNOWLEDGE Grades: Good; **Satisfactory**; Poor; Unacceptable

<p>A satisfactory level of application of knowledge will contain evidence that the candidate understands:</p> <p>S1. Celia is permitted to post on social media and publish articles on her firm’s website.</p> <p>S2. However, she should not engage in behaviour that is likely to undermine public confidence (CD5).</p> <p>S3. Using insulting/demeaning language directed at individuals (the minister) on social media is likely to breach CD5 and possibly CD3.</p> <p>S4. Celia is permitted to act for Philip (if Philip instructs her employer/firm).</p> <p>S5. The discussion about Philip’s case should take place in a private setting, not via public social media posts (CD6).</p> <p>S6. Continuing to discuss matters with Philip and liking his post, resulting in Philip offering disparaging comments on a complainant in a sexual allegation and providing information which could lead to them being identified would breach CD5 and CD3.</p>	<p style="text-align: center;"><i>Moving upwards from satisfactory knowledge</i></p>
	<p>A good answer may additionally contain reference to:</p> <p>G1. Celia needs to consider the security and privacy aspects of communicating with Philip via social media, even if he wishes to communicate in this way. She must be satisfied his there is no risk to the confidentiality of their communications, and should explain the need to maintain confidentiality to Philip.</p> <p>G2. Candidate demonstrates an understanding of the fact that Celia can communicate with the public on social media but should be sensitive to different viewpoints.</p> <p>G3. Celia should be aware that the comments she makes may be responded to in different ways including re-posting (Social Media Guidance).</p> <p>G4. Candidate demonstrates an understanding that the identification or possible identification of the client and complainant by Celia’s post, and naming the court and the client, may be a contempt of court.</p>
	<p style="text-align: center;"><i>Moving downwards from satisfactory knowledge</i></p>
	<p>A poor answer will contain any or all of the following omission(s) or irrelevant/incorrect material, namely:</p> <p>P1. Failure to identify the applicability of CD6 in that Celia should not continue to communicate publicly with Philip about his case beyond the initial indication that he is welcome to instruct the firm or that social media sites such as Facebook and Twitter are not secure methods to communicate professionally.</p> <p>P2. Failure to recognise that Celia’s comments about the minister are disparaging/may be inappropriate.</p> <p>P3. Failure to recognise that Philip’s comments communicated to Celia in public</p>

about the complainant would put Celia in breach of CD5 and CD3.

An **unacceptable** answer may include any or all of the following:

U1. A statement that Celia, once instructed, can publicly communicate with Philip on social media about his case.

SAQ11 INDICATIVE CONTENT COMFORTABLY EXCEEDING SATISFACTORY ANSWER

There is no prohibition on barristers using social media. However, Celia needs to be aware of her duties under the Handbook when posting in both her professional or personal capacity, since the public nature of such forums means that even material published in her personal capacity could be linked to her status as a barrister (Social Media Guidance).

Celia needs to take care that her comments could not be perceived as being designed to demean or insult, as such comments are likely to diminish public trust and confidence in the profession (CD5). Celia's description of the minister is clearly insulting in nature because it is personally directed and accordingly likely to diminish the public trust in the profession. She could have used the same descriptor in relation to the government's plans / proposed changes (i.e. 'moronic changes') and not been in breach of CD5.

Celia should also be aware that it is advisable to avoid getting drawn into heated debates or arguments on social media (Social Media Guidance). Such behaviour could compromise the requirements for barristers to act with honesty and integrity (CD3) and CD5 as there is a direct link to her employment and reference to her professional standing. She should have refrained from responding to the comment posted by the unidentified user.

Celia should always take care to consider the content and tone of what she is posting or sharing. Comments that can reasonably be considered to be in good taste may be considered distasteful or offensive by others. She should also be aware that her comments and replies to them may be re-posted and as a result gain a far larger audience than she may anticipate (Social Media Guidance).

Celia is permitted to publish articles on her firm's website and there is nothing wrong in principle with her publishing the article expressing her views as to the proposed change to the Sexual Offences Act. However, when publishing such articles, she should bear in mind the same considerations that apply to her social media posts, since the article on the website is also available to view by members of the public. Any material that would call into question her integrity (CD3) or diminish the trust and confidence that the public places in the profession (CD5) should be avoided.

Celia must keep her client's affairs confidential (CD6). It is inadvisable to send confidential communications to her client over social media. The communications that took place before Celia's firm was instructed by Philip do not engage CD6 since Philip was not her client at this point. There is nothing wrong with Celia acting for Philip in this scenario. However, after Philip instructed her firm and became a client, Celia should not have communicated with Philip via social media unless he agreed to this method of communication and she was satisfied that he understood the consequences

of communicating through a public forum and any potential or actual risk to a breach of his confidentiality. In this instance, she should have indicated to him that after he became a client he should not communicate with her or the firm in this way, particularly if he was going to include information about his case.

Once Celia has accepted instructions and Philip becomes her client she owes him a duty of confidentiality. By posting the location of the court and his name she has breached this core duty.

By replying to his post from her firm's account, and sending the final message, she has confirmed that the complainant in the case is his wife and applying the jigsaw effect has possibly identified the complainant in a rape case. Where the complainant's identity is not revealed, unless they waive their anonymity, the details must not be published since to do so could be seen as a contempt of court. For Celia, this behaviour would likely form the basis for serious misconduct.

QUESTION: 12**APPLICATION OF KNOWLEDGE** Grades: Good; **Satisfactory**; Poor; Unacceptable

A **satisfactory** level of application of knowledge should contain evidence that the candidate understands:

S1. Zaiban's and Ruby's chambers must take reasonable steps to ensure that in relation to chambers certain equality and diversity requirements are complied with (rC110.3).

S2. This includes Equality monitoring, meaning that chambers should regularly review the allocation of unassigned work (rC110.f.iii), specifically including work allocated to barristers of fewer than four years' standing (rC112.2).

S3. Chambers must take reasonable steps to distribute work fairly amongst its members.

S4. Ruby's suggestion is permitted. Remedial action (rC110) may be taken to improve under-representation of particular groups in pupillage and tenancy as well as any employed position in chambers as long as it is not in the form of positive discrimination (gC146).

S5. Such action may include providing encouragement to disadvantaged groups to apply for tenancy (see rC110e.ii; rC110g.iii; Section 1 of Equality Rules).

S6. Ruby and Zaiban need to consider whether Winston's remark amounts to serious misconduct and, if they conclude it does, they have a duty to report Winston (rC66).

Moving upwards from satisfactory application of knowledge

A **good** answer may additionally contain reference to:

G1. Discussion of the reasonable steps chambers should take to ensure that equality and diversity requirements are complied with, to include the need to take remedial action where appropriate.

G2. Posting in a publication which is addressed to women in particular is not positive discrimination.

G3. Before Ruby or Zaiban make a report to the BSB about Winston, they would need to consider all the circumstances (gC97). This would include speaking to Winston and obtaining an explanation from him.

G4. Whether or not Winston's conduct amounts to serious misconduct, it should still be reported to chambers' HOLP.

G5. Winston's comment may amount to harassment under the meaning in the Equality Act 2010.

G6. It would be advisable for Winston to apologise to Zaiban.

Moving downwards from satisfactory application of knowledge

A **poor** answer will contain any or all of the following omission(s) or irrelevant/incorrect material, namely:

P1. Failure to identify both that it is chambers' responsibility to ensure fair allocation of work and that chambers needs to take reasonable steps to distribute work fairly.

P2. Failure to recognise that remedial action can be taken to improve under-representation without amounting to discrimination.

P3. A statement that Ruby's suggestion about advertising is discrimination and not allowed.

P4. Failure to identify that Ruby and Zaiban need to consider whether Winston's remark amounts to serious misconduct.

An **unacceptable** answer may include any or all of the following:

U1. A failure to identify that Winston must be reported to the BSB **if** Ruby and Zaiban reasonably conclude that his remarks amount to serious misconduct.

SAQ12 INDICATIVE CONTENT COMFORTABLY EXCEEDING SATISFACTORY ANSWER

Chambers must take reasonable steps to ensure that in relation to chambers certain equality and diversity requirements are complied with (rC110.3).

This includes Equality monitoring, meaning that chambers should regularly review the allocation of unassigned work (rC110.f.iii), specifically including work allocated to barristers of fewer than four years' standing (rC112.2). The review will include investigating the reasons for any disparities in that data (rC110.g.ii) and consider the reasons for disparities in data, such as over- or under-allocation of unassigned work to particular groups in chambers (gC150.4). The review may also include taking appropriate remedial action (rC110.g.iii).

It also includes fair access to work, meaning that the affairs of chambers should be conducted in a manner which is fair and equitable for all members of chambers (including the fair distribution of work opportunities among members of chambers) (rC110.i).

Therefore, Zaiban's chambers must take reasonable steps to distribute work fairly among its members, regularly review the allocation of unassigned work (including considering the reasons why its barristers of fewer than four years' standing might be under-allocated work) and consider whether remedial action is appropriate.

Ruby's suggestion is acceptable (Equality Rules). Remedial action may be taken to improve under-representation of particular groups in pupillage and tenancy as well as any employed position in chambers. Such action may include providing encouragement to disadvantaged groups to apply for tenancy (see rC110e.ii; rC110g.iii; Section 1 of Equality Rules): the posting in a publication addressed to women is not positive discrimination.

Winston's remark is at the very least ill-considered. While it may be true that Zaiban is the only Muslim female member of chambers and Winston may argue that he meant no harm (in that he was just stating a fact), his comment made in the context of a discussion between two female members of chambers, one of whom is Muslim, about equality issues, is likely to cause offence. His comment may amount to harassment within the meaning of the Equality Act 2010 (being unwanted conduct related to a relevant protected characteristic which has the purpose or effect of creating an intimidating, hostile, degrading, humiliating or offensive environment). Zaiban has been upset/offended by the remark and it does not matter that Winston may not have intended to upset her. It would be advisable for Winston to apologise immediately to Zaiban and Ruby.

Although this comment appears only to be a single incident, it can still amount to harassment if sufficiently serious (BSB Equality Guidance, section 9). As harassment constitutes serious misconduct (gC96.2), both Ruby and Zaiban will need to consider whether the remark is sufficiently serious to amount to harassment. If so, they have a

duty to report Winston's conduct to the BSB. If they have reasonable grounds to believe there has been serious misconduct then they must report Winston (rC66). Before making such a report, they would need to consider all the circumstances (gC97). This would include speaking to Winston and obtaining an explanation from him and if they reasonably conclude that Winston has committed serious misconduct, they should report him to the BSB and encourage him to report himself to the BSB. Even if they conclude Winston's conduct falls short of serious misconduct, they should report it to chambers' HOLP (gC102).