

Professional Ethics

Regulations Governing Candidate Review

The Regulations Governing Candidate Review may be accessed in other formats. For further information, please contact the Exams Team (EthicsExam@barstandardsboard.org.uk).

1. Scope of Regulations

1.1 These regulations apply to all candidates who have attempted and been deemed 'Not Competent' in a centrally set examination in Professional Ethics during their pupillage and are still within the time limit for completion of that pupillage, as well as those whose written pupillage agreement with their Authorised Education and Training Organisation (AETO) providing pupillage training allows them to continue to resit the exam if to do so would take them beyond the original planned time limit of their pupillage. These regulations also apply where a pupil has not been permitted an extension of their pupillage, but they wish to request a review of their result. In the event that the request for review finds in favour of the pupil, it will be up to the AETO whether they are willing for the pupillage to be completed in light of a new passing result.

1.2 For the purpose of these Regulations:

BSB Bar Standards Board

CEB The Chair and Examiners of the Central Examination Board as appointed from time to time by the Bar Standards Board.

Central Examinations Review Panel The panel appointed by the BSB to consider requests to review CEB decisions.

AETO (Authorised Education and Training Organisation) An organisation authorised to deliver Bar training and, in the context of these regulations, specifically to deliver pupillage/work-based learning.

Request for Review The form for submitting a request for a review of an individual candidate's results and/or a review of cohort results by the BSB, the Central Examination Board and the Central Examinations Review Panel.

Cohort The body of candidates taking the Professional Ethics exam at each sit. This can be broken down into sub-cohorts eg:

- (i) all candidates attempting an assessment in Professional Ethics at a test centre;
- (ii) all candidates at a particular test centre location;

- (iii) all candidates attempting an assessment in Professional Ethics via remote proctoring;
- (iv) or any other sub-group of candidates within parameters identified by the Central Examination Board from time to time.

Enhanced clerical error check A check carried out at the BSB to ensure that marks have been correctly processed and assigned to a candidate.

2. Enhanced clerical error check

2.1 Candidates can request an Enhanced Clerical Error Check (ECEC) with the BSB directly. Under this process, the BSB will check if the results have been captured and processed correctly. This process is not a re-marking of the examination, and no re-marking is offered under the Candidate Review Processes.

2.2 Candidates must submit a request for an ECEC on the appropriate [ECEC form](#) to the BSB.

2.3 The fee for the ECEC is £100. Fees should be paid upon the submission of the request, and no later than 10 days from the form being submitted.

2.4 The fee will be refunded in full if a correction to the candidate's results is confirmed by the BSB under section 2.6.

2.5 The deadlines for applying for an ECEC are:

1 April for the January examinations

1 August for the April examinations

1 November for the July examinations

And 1 February 2023 for the October 2022 examinations.

Candidates may only apply for ECECs during their pupillage and, if their pupillage has been terminated, up to 3 months after termination. If candidates have Extenuating Circumstances, the BSB may, on a case-by-case basis, allow extensions to deadlines. In this event, candidates should email the BSB exams team (EthicsExam@BarStandardsBoard.org.uk) with details and evidence of their extenuating circumstances.

2.6 On receipt of a request under section 2.1 the BSB shall undertake an ECEC and will normally respond to the candidate within 20 working days of receipt of the request, confirming the notified results as correct, or advising of any changes. If the BSB has to extend the 20-working day deadline, the candidate will be told in writing of the reason for the additional time, together with an adjusted deadline.

2.7 The results of the ECEC will be sent to candidates via email.

2.8 Where the ECEC request under section 2.1 reveals that a change to the candidate's result is required, the BSB will prepare a recommendation to the Chair of the CEB

who will action the correction and confirm any changes. The amendment to the candidate's results, including any recalculation of marks, must be communicated in writing (by email) to the candidate.

- 2.9 Where the ECEC finds that no change to a candidate's result is required, there is no right to appeal. The candidate may, however, submit a request for review in accordance with section 3.

3. Review of CEB decisions

- 3.1 A request for review may be submitted in respect of a decision taken by the CEB in confirming individual and cohort results for the centralised assessments in Professional Ethics. The permissible ground for a request is that, in exercising its discretion to confirm individual and/or cohort results, the CEB acted irrationally and/or in breach of natural justice. The fee for this process is £250. Candidates may submit joint applications if they believe that the CEB has acted irrationally and/or in breach of natural justice in respect of cohort results (ie a decision taken regarding whether to make an intervention relating to a cohort as a whole). Candidates who have had no change to their results under the ECEC process may submit a request for review; however, dissatisfaction with an outcome of an ECEC is not grounds for a request for review.
- 3.2 Requests under 3.1 can only be submitted by a candidate (or a cohort of candidates) who has attempted an assessment in Professional Ethics during their pupillage and been deemed 'Not Competent'. Requests will only be accepted after the Chair's Report for the Sit for the examination being challenged has been published. Candidates should read the Chair's Report, as it will inform them of the decisions made by the CEB.
- 3.3 Candidates can apply for a Request for Review by submitting a [Request for Review form](#), along with the fee. This should be no later than the stated deadline (as advertised on the BSB website).
- 3.4 Requests for review received after the published deadline will not be considered, except in exceptional circumstances and at the discretion of the BSB. Exceptional circumstances must be such as are beyond the candidate's control, and which the candidate could not have foreseen. Evidence of exceptional circumstances must be supplied in support of a late request. The Examinations Manager will determine whether the request for review ought to be admitted out of time.
- 3.5 The fee will only be refunded if the Request for Review is deemed by the CEB to be successful (ie a decision under 6.1(b)).
- 3.6 The BSB (Examinations Manager or their delegate as appropriate) will examine the documentation submitted by the candidate under this section to determine whether it provides evidence of an arguable case falling within the jurisdiction of the Central Examinations Review Panel (Review Panel). It is the decision of the BSB to refer the case to the Review Panel. Where necessary the BSB can request clarification or further evidence from the candidate in order to determine the admissibility of a request for review under 3.1.
- 3.7 The BSB will normally make its decision as to the admissibility of a request for review under section 3.6 within 10 working days of the acknowledgement of receipt of the request for review form. If the BSB has to extend the 10-working day deadline the

candidate will be told in writing of the reason for the additional time, together with an adjusted deadline.

- 3.8 Having considered the admissibility of the request for review under 4.6 the BSB will either:
- (a) confirm that it **will not be referring** the request to the Review Panel on the basis that no arguable case has been made out in accordance with section 3.1 (thus concluding the review request process, subject only to section 3.9 (below)); or
 - (b) confirm that it **will be referring** the request to the Review Panel on the basis that an arguable case has been made out in accordance with section 3.1.
- 3.9 Candidates may appeal against a decision as to admissibility under section 3.8(a) only on the following ground: “*Where new, relevant evidence is presented, that for good reason was not originally made available to the BSB.*” Please see the appeals processes below (section 7.1).
- 3.10 Where the BSB determines under section 3.8(a) that a request for review is not to be referred to the Review Panel, it shall inform the candidate in writing normally within 5 working days of its decision giving reasons for its decision.
- 3.11 Where the BSB determines under section 3.8(b) that a request for review is to be referred to the Review Panel, it shall:
- (a) inform the candidate in writing normally within 5 working days of its decision;
 - (b) provide the Chair of the CEB with a copy of the request for review, and a brief statement as to why the request has been referred to the Review Panel, within 5 working days of that decision;
 - (c) refer the request for review to the Review Panel normally within 10 working days.
- 3.12 The procedure under this section is paper-based and there is no right to an oral hearing on the part of the candidate.
- 3.13 Subject to section 5.2, a candidate may not submit further evidence to the BSB under this section once a decision as to admissibility has been taken under 3.8. Candidates may only submit further evidence to the BSB as part of an appeal (see section 7.3).

4. The Central Examinations Review Panel

- 4.1 The BSB will appoint the members of the Review Panel. The Review Panel will normally comprise a Chair and two members nominated by the BSB.
- 4.2 No member of the Central Examination Board may be appointed as members of the Review Panel. Members of the Review Panel shall be independent of the relevant AETOs and should not have had previous knowledge of the candidate or the reason for the request for the review.

- 4.3 The Examinations Manager (or their delegate of appropriate seniority) will act as Secretary to the Review Panel and can advise on factual matters but will take no part in the decision-making process.

5 Decisions of the Central Examination Review Panel

- 5.1 In considering a request for review referred to it by the BSB under section 3.8 (b) the Review Panel shall have before it the following documents:
- (a) copies of all minutes of relevant meetings of the CEB.
 - (b) request for review form and any other documentation the candidate has been requested to supply by the BSB.
 - (c) any response from the Chair of the CEB in respect of the issues raised in the candidate's request for review.
- 5.2 The Chair of the Review Panel will have the discretion to request that the candidate, the BSB, or the Chair of the CEB provide additional evidence as they deem necessary to assist the Review Panel.
- 5.3 After considering the request for review, the Review Panel shall either:
- (a) **uphold the original decision of the CEB** (thus concluding the review request process); or
 - (b) **refer the request for review back to the CEB** stating the reasons why reconsideration by the CEB is warranted.
- 5.4 The Review Panel will normally provide a decision and the reasons for its decision in respect of the request for review in writing to both the candidate and the Chair of the CEB, within 15 working days of the request being referred to it by the BSB.
- 5.5 The procedure under this section is paper-based and there is no right to an oral hearing on the part of the candidate.
- 5.6 Candidates may appeal against a decision to uphold the original decision of the CEB under 5.3(a). Please see the appeals processes below (section 7.4).

6. Referral to the CEB

- 6.1 Where the Review Panel refers the request for review back to the CEB for reconsideration in accordance with 5.3(b) the CEB shall, through formal meeting or consultation of CEB members and Chair's action, review the decision that is the subject of the request for review and take such action as it sees fit within its terms of reference to:
- (a) **uphold its original decision** (thus concluding the review request process, subject only to any right of appeal)); or
 - (b) **conclude that the review request raises issues of substance such as to warrant a change of decision that may impact on a candidate's result;** or

(c) conclude that the review request raises issues of substance such as to warrant a change of decision that may impact on cohort results.

- 6.2 Any decision of the CEB under 6.1 shall be accompanied by reasons and communicated in writing to both the Chair of the Review Panel and the candidate within 10 working days of the Review Panel decision to refer under 5.3(b).
- 6.3 To the extent that any decision of the CEB made under 6.1(b) requires the rectification of cohort marks the CEB Chair will take appropriate action and notify in writing relevant bodies (such as AETOs) of any consequential changes that need to be made to cohort marks.
- 6.4 The procedure under this section is paper-based and there is no right to an oral hearing on the part of the candidate.
- 6.5 Candidates may appeal against the decision of the CEB under 6.1(a). Please see the appeals processes below (section 7.5).

7 THE APPEALS PROCESSES

- 7.1 If a candidate wishes to appeal a decision as to the admissibility of their request for review (under section 3.9), or against the decision to uphold the original decision of the CEB under 5.3(a), or against the decision of the CEB under 6.5, they must provide the BSB with notice of their intention to appeal in writing **within 4 weeks of the date of the decision** as to admissibility. Any notification of an intention to appeal after this will be accepted only at the discretion of the Examinations Manager.
- 7.2 The Independent Reviewer will consider the new evidence. No member of the Central Examination Board may be appointed as an Independent Reviewer. The Independent Reviewer shall be independent of the relevant AETOs and should not have previous knowledge of the candidate or the reason for their appeal.

Appeals against a decision as to admissibility under section 3.8(a)

- 7.3 The possible outcomes of this appeals process are:
- **Accepted.** Where the Independent Reviewer accepts the new evidence as valid, then the BSB will refer the request to the Review Panel. The Independent Reviewer has no other discretion available and may not amend grades in any circumstances.
 - **Rejected.** Where the Independent Reviewer does not accept the new evidence as valid, then we will not refer the request to the Review Panel. The Independent Reviewer may also reject an appeal regarding admissibility if insufficient evidence is submitted by the candidate.

Appeals against a decision of the Central Examination Review Panel to uphold the original decision of the CEB under 5.3(a)

- 7.4 The possible outcomes of this appeals process are:
- **Accepted.** Where the Independent Reviewer accepts the new evidence as valid and/or accepts that the Review Panel should not have upheld the original decision of the CEB, the Independent Reviewer will refer the request back to the CEB stating the reasons why reconsideration by the CEB is warranted (5.3(b)).
 - **Rejected.** Where the Independent Reviewer does not accept that the Review Panel was incorrect in upholding the original decision of the CEB, the Independent Reviewer will state that the review request process has been concluded. The Independent Reviewer may also reject an appeal regarding upholding an original decision if insufficient evidence is submitted by the candidate.

Appeals against a decision of the CEB under 6.1(a)

- 7.5 The possible outcomes of this appeals process are:
- **Accepted.** Where the Independent Reviewer accepts the new evidence as valid and/or accepts that the CEB was incorrect in upholding its original decision, the Independent Reviewer will refer the request back to the CEB stating the reasons

why reconsideration is warranted, having concluded that the review request raises issues of substance such as to warrant a change of decision that may impact on either the candidate's result or those of the cohort. The Independent Reviewer will ask the CEB to take such action as it sees fit within its terms of reference in making any changes to its original decision.

- **Rejected.** Where the Independent Reviewer does not accept that the CEB was incorrect in upholding its original decision, the Independent Review will state that the review request process has been concluded.
- **Insufficient evidence for a finding to be made.**

All appeals

- 7.6 We will ensure that you are informed of the decision of the Independent Reviewer as soon as possible.
- 7.7 There is no further right to appeal.