

**BAR  
STANDARDS  
BOARD**

REGULATING BARRISTERS

**THE BAR STANDARDS BOARD  
CENTRAL EXAMINATIONS BOARD  
CHAIR'S REPORT**

**Pupillage Component Professional Ethics  
April 2022 Sitting**

## **1. EXECUTIVE SUMMARY**

The first sitting of the pupillage component Professional Ethics examination was held on Tuesday 26 April. 112 candidates attempted the examination. All candidates sat a computer-based test. Pen and paper tests were available as an adjustment but none were requested. No significant problems were reported with the administration of the assessment. The exam board confirmed the results for 107 candidates graded 'Competent', and 5 candidates graded 'Not Competent', a passing rate of 95.5%. There were no interventions required in respect of any cohorts of candidates, and no interventions required in respect of any of the assessment items.

## **2. EVOLUTION OF THE ASSESSMENT OF PROFESSIONAL ETHICS**

### **2.1 BPTC**

From 2011 to 2020, Professional Ethics was one of three centrally assessed components of the Bar Professional Training Course (BPTC). Examinations in Professional Ethics were devised by the Central Examinations Board (CEB) on behalf of the Bar Standards Board (BSB) and initially comprised a Multiple Choice Question (MCQ) paper and a Short Answer Question (SAQ) paper. In due course, the assessment evolved into a paper comprising six SAQs, each comprising two sub-parts, set and marked centrally under the oversight of the CEB.

### **2.2 Bar Training**

In 2020, following on from the Future Bar Training reforms, the BPTC was replaced as the vocational stage of training by a range of permitted pathways that could be used to deliver Bar Training. Authorised Education and Training Organisations (AETOs) providing a Bar Training course are required to provide tuition in, and assessment of, professional ethics to a foundation level. The CEB does not directly oversee the assessment of Professional Ethics as an element of the Bar courses delivered by AETOs.

### **2.3 Professional Ethics assessment during pupillage**

Students successfully completing the vocational component of Bar Training, and Bar Transfer Test (BTT) candidates who were assessed after the BTT was aligned to the new vocational assessments, who are taken on as pupils are now required to pass a Professional Ethics examination during the pupillage component. Pupils will not be able to obtain a full practising certificate until they have been deemed competent for the purposes of the pupillage component Professional Ethics assessment. The setting and marking of the pupillage component Professional Ethics assessment is overseen by the CEB, on behalf of the Bar Standards Board. The first sitting of the pupillage component assessment was in April 2022. In order to be eligible to attempt the assessment candidates must have completed three months of pupillage by the date of their first attempt at the examination (unless granted a reduction in pupillage). Examinations are normally offered three times per year and there is no limit on the number of attempts by candidates. For more information on the background to the introduction of the pupillage component Professional Ethics assessment, see the BSB paper published in April 2020 available here:

<https://www.barstandardsboard.org.uk/training-qualification/becoming-a-barrister/pupillage-component/intro-of-professional-ethics-assessment.html>

### **3. THE PUPILLAGE COMPONENT PROFESSIONAL ETHICS EXAMINATION**

#### **3.1 What is assessed – syllabus**

A Professional Ethics syllabus team, comprising academics and practitioners advises the CEB regarding the syllabus for the Professional Ethics assessment and a final update was provided to candidates at the beginning of February 2022: see <https://www.barstandardsboard.org.uk/uploads/assets/65c6907a-fe0d-4b60-be70e835e29fdf30/Professional-Ethics-Pupillage-Assessment-Syllabus-21-22-Tracked-Changes-Updated-February-2022.pdf>

#### **3.2 How is Professional Ethics assessed during the pupillage component?**

The Professional Ethics assessment is an exam comprising six short answer questions. Each question has two sub-parts. All sub-parts are equally weighted. Sub-parts within a question may or may not be connected. The exam is three hours long and is open book: candidates have access to the BSB Handbook in electronic format for the duration of the exam. The questions posed consist of scenarios set within professional practice, each of which requires the candidate to engage with one or more issues, applying ethical principles in order to identify, critically analyse and address the matters raised, and to reach an appropriate resolution of those issues. Candidates are required to provide responses in the form of narrative prose or short answer and to apply their knowledge of ethical principles and, using the provisions of the BSB Handbook, guidance, and other syllabus materials, provide comprehensive analysis and sound reasoning in their answers.

#### **3.3 What constitutes competency in the examination?**

The pupillage component examination in Professional Ethics is designed to assess whether or not candidates have achieved the threshold standard expected of barristers on their first day of practice as defined in the Professional Statement; see <https://www.barstandardsboard.org.uk/uploads/assets/0279b209-dab6-40c9-a554af54994e2566/bsbprofessionalstatementandcompetences2016.pdf>

3.3.1 In terms of notification of results, candidates will be awarded one of two grades in respect of their overall performance. Those achieving the required standard overall will be graded as 'Competent', and those not achieving the required standard overall will be graded as 'Not Competent'. As part of the internal marking process a candidate's answer to any given question sub-part is allocated to one of four categories:

- Good (Competent)
- Satisfactory (Competent)
- Poor (Not Competent)

- Unacceptable (Not Competent)

See **Appendix 1** for a more detailed definition of the key characteristics of an answer deemed to fall within any of these four categories.

3.3.2 In order to be awarded an overall grading of 'Competent', a candidate would normally be expected to have achieved a grading of at least 'Satisfactory' in respect of 8 out of 12 question sub-parts. For details of scripts that are treated as automatic passes, scripts that are subject to holistic review to determine whether the candidate has passed or not, and those scripts resulting in automatic fails, see further sections 4.3.3 to 4.3.7 (below).

3.3.3 Notwithstanding 3.3.2 (above), where a candidate has three or more sub-part answers graded as 'Unacceptable' the candidate will be graded 'Not Competent' in respect of the overall assessment, regardless of the grades awarded in respect of answers for other sub-parts.

### **3.4 How candidates prepare for the examination**

The BSB does not prescribe any programme of prior study by way of preparation for the examination. A practice assessment that candidates can use for developmental purposes is provided on the BSB website, along with an example mark scheme, and guidance on the grading system. Information about all BSB and external support materials can be found here: <https://www.barstandardsboard.org.uk/training-qualification/becoming-a-barrister/pupillage-component/intro-of-professional-ethics-assessment.html>

### **3.5 How the assessment is administered**

The assessment is a computer-based test. Candidates are required to register their intention to take the examination with the BSB and book either a remotely proctored online assessment, or computer-based assessment at one of the designated test centres – full details are available here:

<https://www.barstandardsboard.org.uk/training-qualification/becoming-a-barrister/pupillage-component/intro-of-professional-ethics-assessment/professional-ethics-exam-candidate-guide/part-1-about-your-professional-ethics-assessment.html>

Reasonable adjustments, including the provision of a pen and paper-based assessment, are available for candidates who notify the BSB of their needs within the timelines set out in the online guidance.

## **4. QUALITY ASSURANCE**

### **4.1 Pre exam: paper drafting and confirmation process**

The bank of material used for compiling the pupillage stage Professional Ethics assessment is comprised of questions written by legal practitioners and professional legal academics who have received training from the CEB. The question writers are allocated topics from the syllabus by the Chief Examiner and all submitted questions, along with suggested mark schemes and indicative content (suggested answers),

are reviewed by the Professional Ethics examining team (which has a strong practitioner representation). The Professional Ethics examining team compiles a draft examination paper, ensuring that it complies with core assessment principles including level of difficulty, fairness to candidates and syllabus coverage. Each draft paper and accompanying draft mark scheme and indicative content statement is considered at a paper confirmation meeting, convened by the Chair of the CEB. The purpose of the paper confirmation meeting is to ensure that the assessment is suitably rigorous, fair to the candidates, and that the content is both sufficiently plausible and comprehensible. In addition, the mark scheme for each sub-part is reviewed to ensure that it is accurate, appropriate, and proportionate. Following the paper confirmation meeting, the paper, mark scheme and indicative content statement will undergo a syllabus check by the syllabus officer before being reviewed by a Pilot Tester (Paper Scrutiniser) and Proofreader. The Chief Examiner responds to comments and suggestions arising from these further checks, incorporating changes to the paper where necessary. Once these processes have been completed the examination paper is uploaded to the online system by the BSB Exams Team ready for use in the next scheduled examination.

## **4.2 Post exam: standard setting and mark scheme development**

4.2.1 Standard setting takes place following the sitting of the examination. Standard setting is the process of differentiating between the levels of candidate performance and, in this context, whether a level of candidate performance is to be deemed 'Competent' or 'Not Competent'. This process ensures that a consistent pass standard can be maintained notwithstanding that the level of challenge offered by one examination paper may vary compared to another due to the nature of the questions set. The standard-setting team is comprised of legal practitioners and academics, supervised by the CEB.

4.2.2 The standard setting exercise requires standard setters to identify the pass standard for each of the 12 question sub-parts. In effect this requires standard setters to identify what should appear in the answers of a candidate displaying the threshold level of competence in Professional Ethics as referenced in the Professional Statement as well as the definition of the classifications of Competent and Not Competent respectively, details of which have been published on the BSB website (see above). Standard setters do not expect candidate responses to be of the quality that might be expected from a QC or leading junior, but of an individual who has completed three months of pupillage and who, on the basis of their answers, can be regarded as "comfortably safe."

4.2.3 Standard setters also bear in mind the context in which the Assessment is sat namely that:

- (i) candidates have had exposure to professional practice for a minimum of three months (unless granted a reduction in pupillage), having successfully completed the vocational element of training, including foundation level Professional Ethics;
- (ii) the assessment is a three hour long open book exam; and
- (iii) the objective of the assessment is to test candidates' application of knowledge.

For the first part of the standard setting process, standard setters are asked to identify (independently of each other), the content for each sub-part they consider the notional 'minimally competent candidate' should be able to provide by way of a response for each sub-part. The standard setters are not, at this stage, provided with copies of either the draft mark scheme or indicative content statement produced by the Professional Ethics examining team and confirmed as part of paper confirmation process, but are provided with a sample of candidate answers. Responses from the standard setters regarding expected content for each sub-part is collated by the CEB and circulated for discussion at a plenary meeting attended by all standard setters, the CEB, and BSB Exams Team. The submitted content is discussed at the plenary standard setters' meeting and the pass standard for each sub-part is agreed, along with the content of the mark scheme to be provided to markers, detailing the criteria for four possible gradings: 'Good'; 'Satisfactory' (both 'Competent'); Poor; and Unacceptable (both 'Not Competent').

### **4.3 Post exam: markers' meetings and the marking process**

4.3.1 Before any 'live' marking is undertaken, a markers' meeting is convened to give markers the opportunity to discuss the operation of the mark scheme. "Think-aloud marking" takes place using sample scripts (drawn from the candidate cohort) so that all markers within the team understand the application of the scheme. Following this meeting, the mark scheme may be further amended to include instructions to markers in respect of specific content of the scheme for particular sub-parts.

4.3.2 Markers are allocated a specific question to mark (both sub-parts). Marking teams are supervised by a team leader (an experienced marker) who also marks scripts and moderates the marking of their team. The examining team also moderate the marking of their team leader. Feedback is given to all markers during the moderation/calibration process. All scripts are double marked, and where the two markers disagree a further review process is instituted to resolve differences. Markers are instructed to escalate scripts to their team leader where guidance or clarification is required, and team leaders escalate to the CEB Professional Ethics examining team, if necessary. Clarification and/or guidance is provided by the CEB Professional Ethics examining team to all relevant markers when required during the process.

4.3.3 Once marking and moderation is completed, scripts that have 10 or more 'Satisfactory' or 'Good' sub-part answers ("automatic passes") are removed from further review processes. All such scripts are graded overall 'Competent'. Scripts with four or fewer 'Satisfactory' or 'Good' sub-part answers ("automatic fails") are also removed from further review processes. All such scripts are graded overall 'Not Competent.'

4.3.4 Scripts with three or more sub-part answers graded 'Unacceptable' will be reviewed again by a member of the examining team. Confirmation that a script contains three or more sub-part answers graded 'Unacceptable' will result in the script being removed from further review processes. All such scripts are graded overall 'Not Competent.' If a script is found, as a result of this process, to contain two or fewer sub-part answers graded 'Unacceptable' it will be allocated for holistic review.

4.3.5 Any scripts containing nine Satisfactory or Good sub-part answers (and not containing more than two 'Unacceptable' sub-part answers) are checked and, upon confirmation, will then be removed from further review processes and will be graded overall 'Competent'.

4.3.6 Scripts containing between five and eight 'Satisfactory' or 'Good' sub-part answers (and no more than two 'Unacceptable' sub-part answers) will be subject to a final holistic review. This review involves a "read through" of a complete script to enable the reviewers to judge whether or not the candidate has met the competence threshold (bearing in mind the threshold criteria contained in the Professional Statement and the General Descriptors). The overriding criterion for grading a script as 'Competent' is that, on the basis of the candidate's performance across the paper as a whole, there is no reasonable doubt that s/he had displayed an awareness of Professional Ethics issues commensurate with the granting of a full practising certificate. The rebuttable presumptions are: (i) that those scripts containing eight 'Satisfactory' or 'Good' a sub-part answers will meet the threshold for competence; (ii) and that those scripts containing five sub-part answers graded 'Satisfactory' or 'Good' will not. Scripts with six or seven sub-part answers graded 'Satisfactory' or 'Good' will be carefully scrutinised, using the same principles, reviewers being mindful that that this category contains scripts which are very much on the competence threshold. Each script is reviewed independently by two reviewers. If there is disagreement between the reviewers as to whether a candidate's script meets the threshold for competence, a final review will be undertaken by the Chief Examiner.

4.3.7 Finally, a further check of scripts graded overall as 'Not Competent' at the holistic review stage is undertaken, along with a sampling of those scripts graded overall 'Competent' at the holistic review stage (particularly those deemed to be just on the borderline of competence).

#### **4.4 The role of the exam board – independent psychometrician and independent observer, plus board rep**

The Professional Ethics Examination Board comprises the Chair of the CEB, the Chief and Assistant Chief Examiners for Professional Ethics, the Psychometrician,

the Independent Observer, either the BSB Director General, or the BSB Director of Regulatory Operations. Also in attendance will be the BSB Examinations Managers and Senior Examinations Officers, the Head of Authorisation for the BSB, and the BSB Assessment Lead. The Board meets to receive reports on the conduct of the examination, the performance of the assessment items, and to confirm which candidates have been deemed 'Competent' for the purposes of the assessment. The Board does not determine issues relating to extenuating circumstances or academic misconduct.

#### **4.5 Extenuating circumstances**

The BSB policy on extenuating circumstances in respect of the pupillage stage Professional Ethics examination can be accessed here:

<https://www.barstandardsboard.org.uk/uploads/assets/ddb1ca65-63b8-447e-99993ef80aca5e93/Professional-Ethics-extenuating-circumstances-policy.pdf>

#### **4.6 Academic misconduct**

The BSB Examination Misconduct Policy respect of the pupillage stage Professional Ethics examination can be accessed here:

<https://www.barstandardsboard.org.uk/uploads/assets/62449065-f1f2-4b52-a84f1a5712cc81b8/Professional-Ethics-Misconduct-Policy.pdf>

#### **4.7 Reviews**

Challenges against the academic judgement of examiners are not permitted. Under the candidate review process, examination answers are not re-marked but candidates may request:

(a) an enhanced clerical error check which involves the BSB checking that the results have been captured and processed correctly; and/or

(b) a review, on the grounds that the CEB, in confirming individual and cohort results for the centralised assessment in Professional Ethics, has acted irrationally and/or in breach of natural justice. 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 (i.e. a decision taken regarding whether to make an intervention relating to a cohort as a whole).

See further: <https://www.barstandardsboard.org.uk/uploads/assets/1ec417a2-c574-4105-a5f36d40416d26f1/c8af002b-0266-41d0-a3980d5f73fcd07a/Professional-Ethics-regulations-governing-candidate-review-paper-based-applications.pdf>

## **5. THE APRIL 2022 WBL PROFESSIONAL ETHICS EXAMINATION RESULTS**

### **5.1 Report from the Examinations Manager on the conduct of the examination**

The Examinations Manager confirmed that 116 candidates had registered to sit the April 2022 examination (53 candidates registered to sit at 15 test centres across the



UK, and 63 registered to sit online invigilated). There were no requests for pen and paper examinations for this sit. Of the 116 registering, 112 candidates attempted the exam and 4 were absent. All candidates who attempted the exam were able to complete it. There were no significant operational issues reported. It was noted that at two of the test centres:

(i) candidates were provided with a screen that was not of a sufficient size and therefore were unable to open the handbook alongside the exam questions which impacted on time;

(ii) candidates were attempting to download a PDF version of the handbook. Invigilation staff believed this to be a technical problem resulting in time being lost.

The Examinations Manager advised the Board that, for future sittings, invigilation staff would have the ability to add time to the end of the examination should such issues arise again. For future sittings, test Centres will be required to provide a larger minimum screen size, and BSB guidance to invigilators and candidates will be updated to explain how to access the Handbook during the exam.

All candidates at the sittings concerned were invited to apply for extenuating circumstances if they felt that their performance in the exam may have been adversely affected by either of these factors.

## **5.2 Report from the Examination Manager on the academic misconduct**

In accordance with the published Examination misconduct policy and procedure, the Examinations Manager summarised the details of reported incidents (the 'RAG' report) and reported that 11 'red flag' cases had been raised by invigilators. The video evidence for all 11 cases was reviewed by a Senior Examinations Officer, following which eight cases were identified as having been raised in error, the matter being referred to the software provider and additional guidance being provided for the online invigilation proctors. Of the remaining three cases, two were reviewed by a Senior Examinations Officer who determined that there was no evidence of examination misconduct, and one was referred for investigation. Following further investigation of this remaining case it was confirmed that there was no evidence of examination misconduct.

## **5.3 Report from the Examination Manager on Extenuating Circumstances**

The Examinations Manager confirmed that there were eight candidates with accepted extenuating circumstances, with one further case still pending at the time of the Exam Board meeting, as the candidate had been asked to provide further evidence to support their application. It was noted that this candidate had not sat the exam and as such the pending nature of the case had no bearing on the set of results before the Board. One candidate with accepted extenuating circumstances had their sit disregarded.

## **5.4 Report from the Chief Examiner on the standard setting process**

The Chief Examiner confirmed the standard setting process had been conducted appropriately and there were no issues to raise with the board. It was also noted that ample time was given for standard setters to come to agreement regarding the content of the mark scheme.

## 5.5 Report from the Chief Examiner on the marking and moderation processes

The Chief Examiner confirmed the marking process had gone smoothly, detailing the markers' meetings, calibration of markers, first marking, second marking and agreed marking processes. It was noted that any answers identified as falling within the 'Unacceptable' category had been escalated for verification at a higher level. The Chief Examiner confirmed that a revised version of the mark scheme had evolved reflecting the discussions regarding the operation of the scheme at the markers' meetings.

## 5.6 The operation of the assessment – results for each question sub-part

5.6.1 The following is a summary of the distribution of candidate performance in respect of each question subpart and a brief overview of any discernible patterns in terms of candidate answers, in particular areas that proved challenging. To preserve the integrity of its question bank, the BSB does not provide details of the questions used in the assessment, although the broad syllabus area under consideration is identified.

SAQ 1A							
Unacceptable		Poor		Satisfactory		Good	
#	%	#	%	#	%	#	%
3	3%	39	35%	17	15%	53	47%
<i>Broad syllabus areas covered:</i> Acceptable conduct of a barrister outside of the court room							
<i>Key observations from Chief Examiner on cohort performance:</i> Generally speaking, the question was answered reasonably well with candidates identifying the breach of CD5. Where some candidates failed to reach the required threshold was in failing to identify that a data breach had occurred as a result of the loss and compromise of confidential materials, and this warranted a report, or at the very least, consideration of reporting to the Information Commissioner. Accordingly, some candidates also failed to distinguish between a breach of CD6 and a data breach which gave rise to obligations under GDPR.							
<i>Decision of the exam board in relation to sub-part:</i> no intervention necessary results for sub-part confirmed and applied to candidates							

SAQ 1B							
Unacceptable		Poor		Satisfactory		Good	
#	%	#	%	#	%	#	%
3	3%	4	4%	56	50%	49	44%

*Broad syllabus areas covered: Cab Rank Rule*

*Key observations from Chief Examiner on cohort performance: Overall candidates performed very well in dealing with the ethical issues that arose within this scenario. Some, however, failed to identify the relevance of CD4 underpinning the rationale of the Cab Rank Rule when applied within a factual setting. A small number of candidates concluded that the barrister was able to refuse the instructions, on the basis that the positions held within the community amounted to a conflict of interest. The fact pattern was drafted specifically to exclude this prospect, and while candidates were credited for considering this point and then disregarding it in outcome, those that incorrectly concluded that it provided an appropriate basis for exclusion were deemed unsatisfactory.*

*Decision of the exam board in relation to sub-part: no intervention necessary results for sub-part confirmed and applied to candidates*

SAQ 2A							
Unacceptable		Poor		Satisfactory		Good	
#	%	#	%	#	%	#	%
7	6%	4	4%	45	40%	56	50%

*Broad syllabus areas covered: Dealing with a vulnerable client*

*Key observations from Chief Examiner on cohort performance: Candidates generally performed well in this sub-part and were able to identify the key ethical issues. Some candidates omitted application of CD4 and instead focussed on other core duties, or failed to offer the appropriate advice to the client about the consequences of non-attendance at the hearing. The candidates who fell well below the expected standard missed the vulnerability point entirely.*

*Decision of the exam board in relation to sub-part: no intervention necessary results for sub-part confirmed and applied to candidates*

SAQ 2B							
Unacceptable		Poor		Satisfactory		Good	
#	%	#	%	#	%	#	%
4	4%	19	17%	64	57%	25	22%
<i>Broad syllabus areas covered:</i> Ethical issues arising from an opposing barrister seeming ill-prepared							
<i>Key observations from Chief Examiner on cohort performance:</i> Some candidates wrongly focussed on the claimant's barrister in terms of ethical duties, with some wrongly concluding that there was a duty on her to prevent the issues which arose in relation to her colleague. Poorer candidates focussed on details relating to serious misconduct while missing the fundamental point that the defendant's barrister ought to have refused the brief in the first instance or approached the instructions differently in order to comply with CD10 and to avoid his breach of CD2 and CD7.							
<i>Decision of the exam board in relation to sub-part:</i> no intervention necessary results for sub-part confirmed and applied to candidates							

SAQ 3A							
Unacceptable		Poor		Satisfactory		Good	
#	%	#	%	#	%	#	%
0	0%	6	5%	62	55%	44	39%
<i>Broad syllabus areas covered:</i> Client admitting guilt but maintaining a 'not guilty' plea							
<i>Key observations from Chief Examiner on cohort performance:</i> Generally, this question appeared to be quite straightforward for candidates. Most candidates explained the steps they could take to present the case and some went on to explain the differences between the barrister's role in legal argument and that of putting forward a positive defence in these circumstances. Some candidates indicated they might need to withdraw as CD4 may have been compromised: these were generally the weaker scripts. It is reassuring to note that no candidate made the error of concluding that they could continue to represent the client without limitation in this situation.							
<i>Decision of the exam board in relation to sub-part:</i> no intervention necessary results for sub-part confirmed and applied to candidates							

SAQ 3B							
Unacceptable		Poor		Satisfactory		Good	
#	%	#	%	#	%	#	%
0	0%	4	4%	56	50%	52	46%

*Broad syllabus areas covered:* Gifts from clients

*Key observations from Chief Examiner on cohort performance:* Candidates should have recognised that accepting the more lavish gifts would lead others to form the view that their independence would be compromised. Candidates did not always fully explain or reference their answers to the range of gifts. To improve answers, candidates could have discussed more fully each aspect of the barrister's conduct and how the barrister could deal with this situation in explaining to the client the reasons for refusal of the gifts.

*Decision of the exam board in relation to sub-part:* no intervention necessary results for sub-part confirmed and applied to candidates

SAQ 4A							
Unacceptable		Poor		Satisfactory		Good	
#	%	#	%	#	%	#	%
0	0%	17	15%	51	46%	44	39%

*Broad syllabus areas covered:* Resisting pressure from instructing solicitors to act in a manner that may not be in the client's best interests

*Key observations from Chief Examiner on cohort performance:* Candidates generally performed very well in this question. Those candidates who performed poorly tended to miss the more practical points, such as advising the client that the missing evidence should be obtained and failed to deal at all with the issue of the other brief.

*Decision of the exam board in relation to sub-part:* no intervention necessary results for sub-part confirmed and applied to candidates

SAQ 4B							
Unacceptable		Poor		Satisfactory		Good	
#	%	#	%	#	%	#	%
11	10%	21	19%	50	45%	30	27%

*Broad syllabus areas covered:* requirements to undertake public access work

*Key observations from Chief Examiner on cohort performance:* Overall, this question was answered reasonably well but did present difficulties to some candidates. Common errors for poorer candidates included failing to recognise that the barrister approached to act as the 'qualified person' did not meet all the requirements under the rules to act in that capacity. The poorer candidates often concluded that the barrister could act as the qualified person, and their answer then simply focussed on the competency issues. Poorer responses also often omitted the requirement to consider the best interests of the client under CD2 and/or the nature of the case/client as outlined in the fact pattern.

*Decision of the exam board in relation to sub-part:* no intervention necessary results for sub-part confirmed and applied to candidates

SAQ 5A							
Unacceptable		Poor		Satisfactory		Good	
#	%	#	%	#	%	#	%
2	2%	18	16%	46	41%	46	41%

*Broad syllabus areas covered:* conduct of cross-examination and duty to the court

*Key observations from Chief Examiner on cohort performance:* Generally speaking, this was a well-answered question where candidates identified the need to bring decisions, including adverse decisions, to the court's attention and that counsel must not cross-examine solely in order to unsettle or embarrass a witness. However, weaker answers failed to identify the relevant core duties and failed to distinguish between what the claimant could (and should) be cross-examined about (ie the joking about not following advice) and should not be cross-examined on (the flirting). A small number of candidates made the fundamental error of stating that the barrister could choose whether or not to bring the procedural error to the court's attention.

*Decision of the exam board in relation to sub-part:* no intervention necessary results for sub-part confirmed and applied to candidates

SAQ 5B							
Unacceptable		Poor		Satisfactory		Good	
#	%	#	%	#	%	#	%
1	1%	17	15%	78	70%	16	14%

*Broad syllabus areas covered:* On-line profiles of barristers' previous cases and client confidentiality

*Key observations from Chief Examiner on cohort performance:* Candidates generally answered this sub-part well, recognising the need to maintain client confidentiality and a considerable number also identified that the application of CD5 might mean that even where a barrister has the "right" to publish information, it may be courteous to limit what is published. Poorer answers failed to distinguish between information in the public domain and information protected by confidentiality, and tended to adopt an over-cautious approach in suggesting that the barrister could in no circumstances take on the new instructions.

*Decision of the exam board in relation to sub-part:* no intervention necessary results for sub-part confirmed and applied to candidates

SAQ 6A							
Unacceptable		Poor		Satisfactory		Good	
#	%	#	%	#	%	#	%
1	1%	8	7%	60	54%	43	38%

*Broad syllabus areas covered:* instructions to plead fraud in the absence of any reasonably credible material to support such a position

*Key observations from Chief Examiner on cohort performance:* This question was, largely, answered well. Most candidates managed to identify the majority of points (perhaps the exception being the point about limiting discretion) and better candidates went on to state that practical advice should be given to the solicitor to wait for the doctor's report before drafting the defence. Most candidates also answered that if the solicitor insisted on pleading fraud the barrister must cease to act and explain his reasons for doing so. Poorer candidates failed to identify that the barrister was in fact being instructed to plead fraud and/or failed to identify the operative principles relating to pleading fraud.

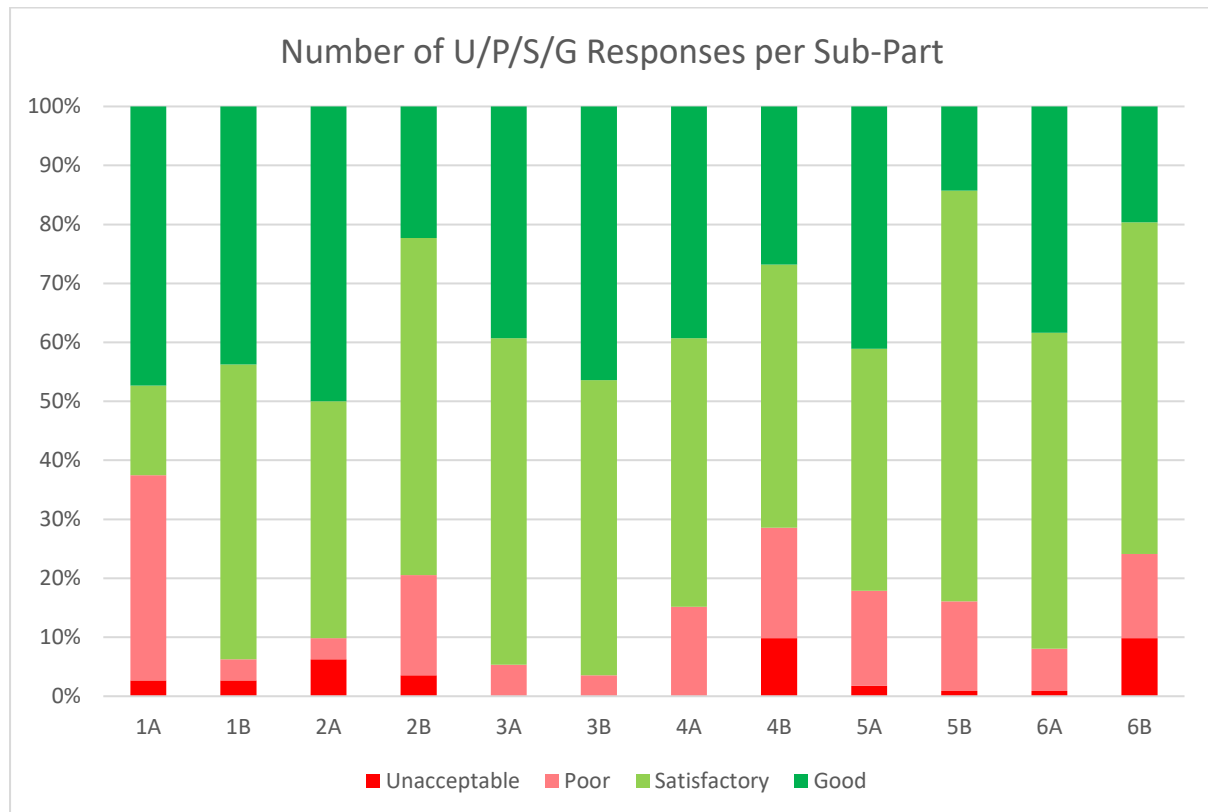
*Decision of the exam board in relation to sub-part:* no intervention necessary results for sub-part confirmed and applied to candidates

SAQ 6B							
Unacceptable		Poor		Satisfactory		Good	
#	%	#	%	#	%	#	%
11	10%	16	14%	63	56%	22	20%
<p><i>Broad syllabus areas covered:</i> Conflict of interest between existing and former clients and the need to withdraw</p>							
<p><i>Key observations from Chief Examiner on cohort performance:</i> This appears to have been a more difficult sub-part for candidates. Most candidates did manage to identify the existence of the conflict of interest and the duty to maintain confidentiality to past and existing clients and as a result the barrister could not disclose the information he had about his previous client's admission. Poorer candidates took the view that the barrister had a discretion as to whether or not to withdraw (and should withdraw in the situation). Very poor candidates failed to identify the conflict of interest and/or indicated that the barrister could continue to act in these circumstances.</p>							
<p><i>Decision of the exam board in relation to sub-part:</i> no intervention necessary results for sub-part confirmed and applied to candidates</p>							



## 5.6.2

### Distribution of categorisations across question sub-parts



The graphic above shows the distribution of answer categorisations across all 12 sub-parts of the assessment. Apart from sub-parts 1(a) and 2(a) 'Satisfactory' is the most prevalent answer categorisation. Sub-part 1(a) is somewhat unusual in that there are more answers graded either graded 'Good' or 'Poor' than there are answered graded as 'Satisfactory'. 2(a) is also significant in that there were more answered graded 'Unacceptable' than there were answers graded 'Poor'. Across the 12 answer sub-parts there was a total of 43 unacceptable answers (out of a total of 2,909 answers), resulting in an 'Unacceptable' answer rate of 1.48%.

5.6.3 In broad terms question sub-part 6(b) proved the most challenging for candidates because it recorded the second-lowest percentage of 'Good' answers (20%) and the joint-highest percentage of 'Unacceptable' answers (10%). There is no clear evidence that candidates lacked time to complete the assessment. All candidates attempted all 12 question sub-parts. The CEB will, however, keep the issue of the time candidates are allowed to complete the assessment under review.

## 5.7 Observations from the Chief Examiner for Professional Ethics on the operation of the assessment

The Chief Examiner noted that there were no unacceptable answers for sub-parts 3(a) and 3(b) which indicated that candidates were used to this type of question. Most candidates would have come across this topic during the vocational stage of Bar Training. Feedback from the marking team (Standard Setters, Markers and

Team Leaders) was that this was a very traditional question. It was expected that candidates would perform well or at least work their way through it logically. Candidates who didn't perform well missed out on detail and provided very basic answers. The results for sub-part 3(a) were compared with those for sub-part 1(b) as this was also a typical question where it might be expected that candidates would perform well. There was a similar profile for both sub-parts in that most of the failing candidates delivered a satisfactory performance. The Chief Examiner did not raise any matters of direct concern.

## **5.8 Comments from the Independent Psychometrician**

The Psychometrician noted that it was not possible to adopt a standard psychometric model when analysing the performance of the question sub-parts as candidate performance was not categorised in a standard numerical-based system. In particular, with a very low failure rate, any attempt at correlation (ie investigating the extent to which candidates graded 'Not Competent' overall had been rated 'Not Competent' in relation to any question sub-part) was unlikely to provide any reliable guide to the operation of a question sub-part. It was noted that the candidates graded 'Not Competent' overall had performed better in relation to sub-parts 3(a) and 3(b) but this could be expected in a question where 95% of candidates' answers were graded as 'Competent'. Notwithstanding these observations, the Psychometrician confirmed that he was content with the data seen for each sub-part and did not feel that any further scrutiny was required.

## **5.9 Comments from the Independent Observer**

The Independent Observer noted that a lot of effort and resources had gone into the processes underpinning the Professional Ethics examination which was completely appropriate given the high stakes nature of the assessment. He confirmed to the Board that he was happy to endorse the results.

## **6. COHORT AND CANDIDATE PERFORMANCE APRIL 2022 SITTING**

Results for the April 2022 sitting of the pupillage stage professional Ethics examination are as follows.

Total Number of Candidates	112
Number Passing	107
Passing Rate (%)	95.5%

### **6.1 Analysis of cohort performance**

6.1.1 Based on the marking protocols relating to candidates automatically graded as 'Competent' and those candidates whose overall examination performance is referred for an holistic review (see further 4.3.3, above) 83% of candidates were deemed to be automatic passes, and a further 12.55% were deemed to have passed following an holistic review of their scripts.

Automatic Fail	2
Fail at Holistic Review Stage	3
Pass at Holistic Review Stage	14
Automatic Pass	93

6.1.2 The breakdown of 'Competent' candidates by reference to the number of answers graded as 'Good' or 'Satisfactory' was as follows:

Number of Passing Candidates With	
5 Satisfactory/Good Responses	0
6 Satisfactory/Good Responses	2
7 Satisfactory/Good Responses	4
8 Satisfactory/Good Responses	7
9 Satisfactory/Good Responses	14
10 Satisfactory/Good Responses	22
11 Satisfactory/Good Responses	37
12 Satisfactory/Good Responses	21

6.1.3 The minimum pass profile for a script not referred for holistic review for this sitting was a combination of 9 sub-part answers graded 'Satisfactory' and 3 sub-part answers graded 'Poor'. The minimum pass profile for a script following holistic review for this sitting was a combination of 1 sub-part answer graded 'Good', 7 sub-part answers graded 'Satisfactory', 2 sub-part answers graded 'Poor', and 2 sub-part answers graded 'Unacceptable'.

Professor Mike Molan  
 Chair of the CEB  
 8 July 2022

## Appendix 1

### General Descriptors

Grade	Descriptor
Good = "More than Competent"	Content exceeds the criteria for a Satisfactory answer ie "more than Satisfactory"
Satisfactory = Competent	<p>A competent answer demonstrating satisfactory understanding of the key issues, but with some inaccuracies and/or omissions. Such inaccuracies and/or omissions do not materially affect the integrity of the answer.</p> <p>Analysis and/or evaluation is present but may not be highly developed.</p> <p>Evidence of insight, but it may be limited.</p> <p>Use of appropriate information and principles drawn from syllabus materials.</p> <p>Shows an awareness of the key issues, and comes to appropriate conclusions.</p>
Poor = Not yet Competent	<p>Poor understanding of the key issues with significant omissions and/or inaccuracies.</p> <p>Limited or completely lacking in evidence of understanding.</p> <p>Interpretation, analysis and/or evaluation is shallow and poorly substantiated.</p> <p>Little or no evidence of insight.</p> <p>Limited use of information and principles.</p> <p>Not evident that syllabus materials were understood and/or incorporated into answer.</p> <p>Shows a very limited awareness of the key issues and fails to come to appropriate conclusions.</p>
Unacceptable = Not yet competent	<p>The answer contains material which, in the view of the examiners, is so <i>clearly incorrect</i> that, if it were to be replicated in practice, it could significantly affect the client's interests or the administration of justice (such acts or omissions would include behaviour which would require reporting to the BSB) and/or place the barrister at risk of a finding of serious misconduct.</p> <p>An answer which, in the view of the examiners, fails to make a genuine attempt to engage with the subject-matter of the question (eg the candidate's response amounts only to "<i>I do not know the answer to this question, but I would telephone my supervisor for assistance</i>") will fall into the "clearly incorrect" category of answers.</p>

	<p>A failure by a candidate to provide any answer will be treated in the same manner as a candidate who provides a “clearly incorrect” answer.</p>
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