

**BAR
STANDARDS
BOARD**

REGULATING BARRISTERS

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

**Pupillage stage Professional Ethics
October 2022 Sitting**

1. EXECUTIVE SUMMARY

The third sitting of the pupillage component Professional Ethics examination was held on Tuesday 25th October 2022 at 2pm. 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. Results were confirmed by the Final Board as follows:

	Total number of candidates at this sitting	Total number of candidates passing at this sitting	% pass rate at this sitting
Apr-22	112	107	95.54%
Jul-22	25	23	92.00%
Oct-22	9	7	77.78%
Cumulative total to date	146	137	93.84%

As the table indicates, the October 2022 sitting involved a very small cohort of candidates. The lower passing rate reflects the impact of 2 candidates failing where the total number entered was only 9. There were no interventions required in respect of any cohorts of candidates, and no interventions required in respect of any of the assessment items. To date, just under 94% of attempts at the assessment have been 'Competent'.

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 Training courses delivered by AETOs.

2.3 Professional Ethics assessment during pupillage

Students successfully completing the vocational component of Bar Training and Bar Transfer Test 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 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 4.3.6 (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 Proof-reader. 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 KC 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. For the July 2022 sitting, given the small cohort of candidates, the examining team moderated the marking of all markers, including team leaders. 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 nine or more 'Satisfactory' or 'Good' and no more than two 'Unacceptable' 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 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' 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 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.

4.3.6 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 – 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 Manager 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 OCTOBER 2023 WBL PROFESSIONAL ETHICS EXAMINATION RESULTS

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

The Examinations Manager confirmed that 9 candidates had registered to sit the October 2022 examination (4 candidates registered to sit at 2 test centres across the UK, and 5 registered to sit online invigilated). There were no requests for pen and paper examinations for this sit. All registering candidates attempted the exam and were able to complete it. There were no significant operational issues reported. At one test centre, however the Board was advised that three candidates sat at a Test Centre which was using devices which did not meet the BSB minimum screen size and resolution requirements, with the consequence that the candidates were unable to view the exam and the handbook side-by-side. These candidates were invited to apply for extenuating circumstances and all three did so.

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 no 'red flag' cases had been raised by invigilators. One incident report was received relating to a candidate whose computer froze briefly and needed to be restarted. The TC invigilator was able to add the lost time to the end of the exam.

5.3 Report from the Examination Manager on Extenuating Circumstances

The Examinations Manager confirmed that there were 3 candidates submitting extenuating circumstances claims, relating to the screen resolution issue mentioned at 5.1. All three cases were accepted by the Panel.

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 sub-part 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	
#	%	#	%	#	%	#	%
0	0%	5	56%	3	33%	1	11%
<p><i>Broad syllabus areas covered:</i> This scenario required candidates to identify and apply the relevant ethical principles for a barrister when instructed by a client to put a range of questions to a claimant in civil trial (CD5, CD2 and CD7).</p>							
<p><i>Key observations from Chief Examiner on cohort performance:</i></p> <p>Most candidates successfully identified that if the barrister proceeded to ask the questions and make the submissions proposed by the client, she would be in breach of rC3.2 and therefore she should explain to the client that she was prohibited from complying with his instructions. However, there was a failure to deal with the situation where the client insisted that the barrister put those questions and to address the application of CD2 in that it was not in the client's best interests to proceed as he was suggesting. The second part of the question was dealt with adequately by most candidates. Better responses to this question included references and full discussions of the application of CD5, CD2 and CD7 to the first part of the scenario.</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>							

SAQ 1B							
Unacceptable		Poor		Satisfactory		Good	
#	%	#	%	#	%	#	%
0	0%	2	22%	6	67%	1	11%
<p><i>Broad syllabus areas covered:</i> This scenario raised issues of how the same barrister, instructed on a public access basis, should deal with instructions to plead fraud but where there was no reasonably credible material in existence to support such a position in the defence of a claim arising out of an accident at work. (CD1,2 &3)</p>							
<p><i>Key observations from Chief Examiner on cohort performance:</i> A satisfactory response needed to include recognition that the barrister was being instructed to plead fraud; the barrister could not plead fraud unless both requirements under rC9.2c were satisfied; while currently the barrister had clear instructions to plead fraud, there was no reasonably credible material on which to plead fraud; CD3 was also to be identified in this context. As regards the BSB request, the barrister was required to comply with CD9, responding promptly to the BSB request and providing a copy of her conference notes.</p> <p>As regards responses to this sub-part, these were generally satisfactory with candidates addressing both aspects of the question. The poor responses failed to identify from the fact pattern that the barrister had been asked to plead fraud. Better candidates dealt the key issues and went on to state that CD2 was subject to CD1 and CD3; and in respect of the second part of the question, they noted that disclosure of the conference notes to the BSB in this context would not amount to a breach of CD6 and/or identified the principles established in <i>R (Morgan Grenfell & Co Ltd) v. Special Commissioner</i> [2003] 1 A.C. 563.</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>							

SAQ 2A							
Unacceptable		Poor		Satisfactory		Good	
#	%	#	%	#	%	#	%
0	0%	2	22%	5	56%	2	22%
<p><i>Broad syllabus areas covered:</i> This scenario tested candidates' understanding of a barrister's independence and his personal responsibility for his own work and conduct while ensuring he acts in the best interests of his client. (CD4, CD2 and CD7)</p>							
<p><i>Key observations from Chief Examiner on cohort performance:</i> Generally speaking, the question was answered well. In respect of the barrister's duty to maintain his independence and not to be pressured by a senior member of chambers, candidates consistently answered accurately and comprehensively in respect of CD4. Similarly, they identified that the barrister must promote his client's best interests without regard for any personal consequences. Candidates were weaker when dealing with what should be said to the client, dealing only cursorily with this issue. All candidates identified the need for a short adjournment to provide advice, and to address the KC's behaviour. The resolution and the steps to be taken in respect of the KC were not always fully explained but the need to take action, even if merely to report to the head of chambers, was identified.</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>							

SAQ 2B							
Unacceptable		Poor		Satisfactory		Good	
#	%	#	%	#	%	#	%
1	11%	0	0%	7	78%	1	11%
<p><i>Broad syllabus areas covered:</i> Competence to take on work outside experience; accepting gifts; use of notes from a previous case. (CD4, CD5, CD7 and CD6)</p> <p><i>Key observations from Chief Examiner on cohort performance:</i> All candidates recognised the basic issue of the barrister's independence potentially being (or being seen to be) compromised if he accepted a gift or entertainment. Candidates initially indicated this was a gift; however, weaker candidates wrongly based their discussion on whether the offer related to referral fees. There was a failure on the part of weaker candidates to identify that the barrister should not accept this instruction, since he was neither competent nor capable of dealing with the case. He had no experience and even with notes and assistance the inevitable conclusion was that the instructions should be refused. In respect of the use of the notes, some candidates completely failed to address this issue. Others discussed CD6 and the need to maintain confidentiality. Better than satisfactory responses considered not only CD6 but went on to deal with GDPR and the appropriate use of the notes in the 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>							

SAQ 3A							
Unacceptable		Poor		Satisfactory		Good	
#	%	#	%	#	%	#	%
0	0%	4	44%	4	44%	1	11%
<p><i>Broad syllabus areas covered:</i> This question required candidates to assess the barrister's ability to accept and carry out instructions: first in relation to public access work, secondly identifying a conflict of interest in accepting instructions and finally in respect of carrying out client instructions, where to do so would amount to conducting litigation. (CD4, CD2, rC120-122 and rC125).</p>							
<p><i>Key observations from Chief Examiner on cohort performance:</i> It was noted that while candidates overall gave thorough answers to this question, weaker candidates failed to identify that the barrister here required supervision when taking on public access work under the three-year rule. The question clearly raised the issue as to the circumstances in which the barrister could accept the instructions on a public access basis. The fact pattern made it very clear that the barrister had recently completed pupillage and therefore it was not unreasonable to expect candidates to highlight the necessary requirements in order for the barrister to accept public access instructions.</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>							

SAQ 3B							
Unacceptable		Poor		Satisfactory		Good	
#	%	#	%	#	%	#	%
3	33%	5	56%	1	11%	0	0%
<p><i>Broad syllabus areas covered:</i> Marketing of chambers; website content; public access work; referral fees. (CD4, CD5 & CD10)</p> <p><i>Key observations from Chief Examiner on cohort performance:</i> On the whole candidates answered reasonably well the question posed in relation to advertising. It was clear, however, that a number of candidates struggled to grasp the substantive issues regarding referral fees and the fee arrangements proposed in the scenario. It appeared that candidates had limited understanding of the issues outlined and were confused as to what amounted to a referral fee or not. (rC10; rC19; CD2; gC106)</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>							

SAQ 4A							
Unacceptable		Poor		Satisfactory		Good	
#	%	#	%	#	%	#	%
2	22%	2	22%	3	33%	2	22%
<p><i>Broad syllabus areas covered:</i> The relevant ethical principles that apply when a barrister is considering taking on additional paid employment. (CD 4, 5 & 10)</p> <p><i>Key observations from Chief Examiner on cohort performance:</i> Overall this question was answered reasonably well with most candidates identifying the import of CD5 in relation to the additional employment. Most candidates also considered the need for the barrister to prioritise her self-employed practice over taking on additional roles(CD10). Weaker candidates failed to identify CD4 in detail or to apply it properly to the facts. Weaker candidates also avoided reaching clearly reasoned and definitive conclusions as to whether the barrister should accept the roles. Stronger candidates went on to consider the significance of CD2 and CD7 were the barrister to take on extra employment and the need to ensure that it did not clash with court work in particular.</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>							

SAQ 4B							
Unacceptable		Poor		Satisfactory		Good	
#	%	#	%	#	%	#	%
0	0%	1	11%	7	78%	1	11%
<p><i>Broad syllabus areas covered:</i> The relevant ethical principles that apply when a barrister is working in a public place and handling confidential information; dealing with witnesses outside court. (CD3 & CD6)</p>							
<p><i>Key observations from Chief Examiner on cohort performance:</i> This question was generally answered well. All candidates identified the CD3 issues, and specifically that a barrister must not rehearse, practise with, or coach a witness. Although all candidates identified the applicability of CD6, there was a varying degree of application to the facts. Weaker candidates only identified CD6 generally, or only in relation to one aspect of the barrister's conduct. Stronger candidates were able to identify and discuss each potential breach of CD6 by the barrister as well the practical steps to be taken by the barrister in order to address the breaches highlighted in the scenario.</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>							

SAQ 5A							
Unacceptable		Poor		Satisfactory		Good	
#	%	#	%	#	%	#	%
1	11%	4	44%	1	11%	3	33%
<p><i>Broad syllabus areas covered:</i> A barrister's ethical duties when using social media, both in a work-related and a personal capacity. (CD4, CD5, & CD6)</p> <p><i>Key observations from Chief Examiner on cohort performance:</i> This subpart posed difficulty to some candidates. While generally they were able to identify and apply one or other or CD5 and CD6, there was a failure to contextualise these fully in the given fact pattern. This failure was on occasion combined with an omission on the candidates' part to address the element of the question which required them to consider whether the barrister could act for the client. It was not a case of there being a right or wrong answer, the issue was candidates failing to discuss that point at all, which led to the overall mark of poor.</p> <p>Some candidates were able to provide a better than satisfactory answer by considering the social media guidance in more detail and/or identifying how one post may bring in CD4 considerations.</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>							

SAQ 5B							
Unacceptable		Poor		Satisfactory		Good	
#	%	#	%	#	%	#	%
0	0%	1	11%	2	22%	6	67%

Broad syllabus areas covered: The ethical duties of a barrister representing a client at a compliance hearing in a criminal case, when the barrister involved was not trial counsel, and various mistakes had been made or matters had not been addressed as they should have been. (CD1, CD2 & CD4)

Key observations from Chief Examiner on cohort performance: Overall, candidates answered this question well and were able to identify the main core duties which applied and provide answers which discussed what the barrister could do to try to resolve matters. A good percentage of candidates were able to provide a better than satisfactory answer, often by identifying CD4 in this scenario and considering the impact of a barrister not being fully open with the court, both in terms of the consequences to the client and also to the solicitor's firm.

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	11%	1	11%	7	78%	0	0%

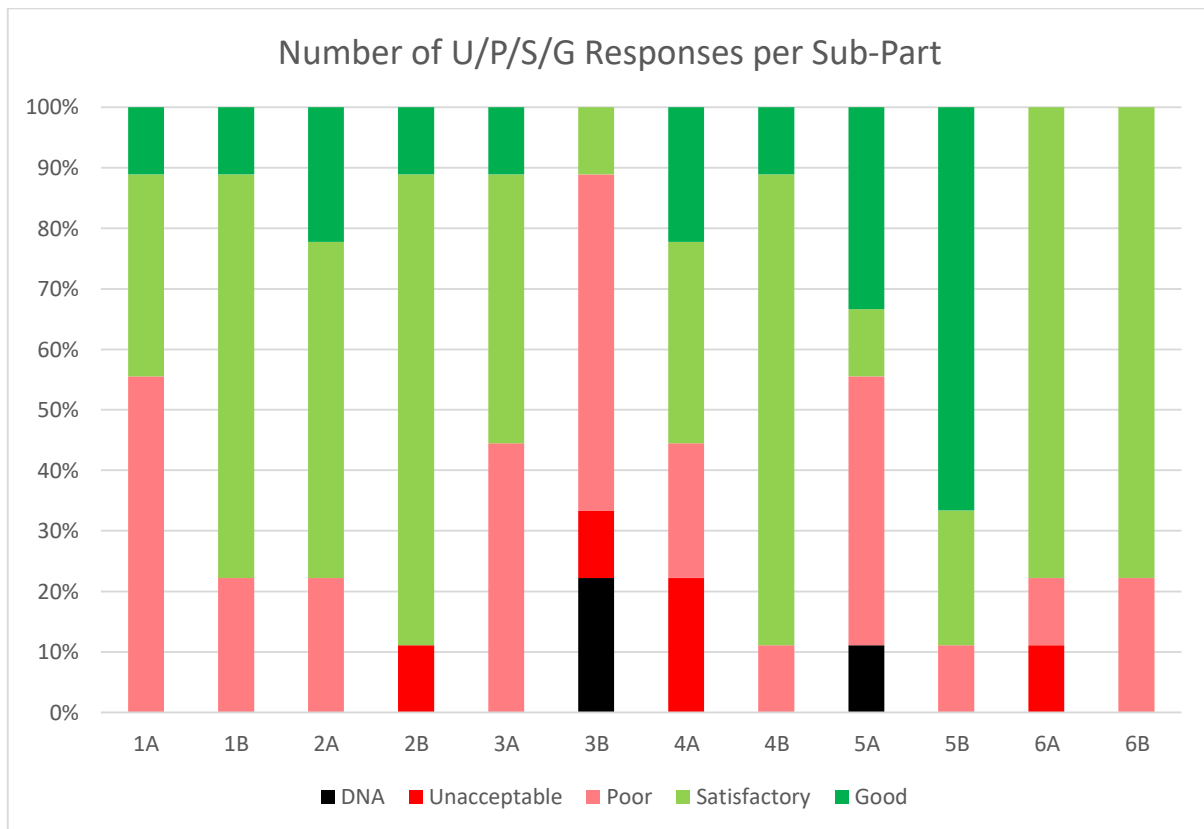
Broad syllabus areas covered: Ethical issues arising in relation to the use of inaccurate information in an application for legal aid by an instructing solicitor; the circumstances in which the barrister would need to withdraw. (CD3, CD4, CD5 and rC25.1).

Key observations from Chief Examiner on cohort performance: Overall candidates performed well in this question identifying the fundamental duties owed here by the barrister. The majority recognised the need to correct the position and that a failure to do so would result in the barrister being required to withdraw. A suggestion, that the barrister was duty bound to raise the matter with the court, thus breaching client confidentiality in circumstances in which such a step was neither permitted nor required, was less than satisfactory.

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	
#	%	#	%	#	%	#	%
0	0%	2	22%	7	78%	0	0%
<p><i>Broad syllabus areas covered:</i> The need to act with independence and to uphold the duty to the court; ethical issues where a barrister who was acting for the prosecution was asked by the police officer in the case to make a bad character application based on unverified information and convictions. (CD1, CD3 and CD4)</p>							
<p><i>Key observations from Chief Examiner on cohort performance:</i> Most candidates correctly identified the key issues in this case and were able to provide a satisfactory answer to the question, recognising they could not do as the officer asked. Candidates were also able to demonstrate that the barrister could make an application to adduce bad character but only if there were grounds to do so and had to disclose any previously undisclosed but disclosable material to the defence. While most responses to this question were satisfactory, none were better than satisfactory.</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 for the October 2022 sitting.

5.6.3 Taking the 12 item responses across 9 candidates produces 108 answers which were graded as follows:

Grading	% of all responses October 2022
DNA	2.8%
Unacceptable	4.6%
Poor	26.9%
Satisfactory	49.1%
Good	16.7%

Only sub-part 4A had more than one ‘Unacceptable’ response. (30% of responses to that sub-part), and 1A and 3B both had 5 ‘Poor’ responses. Beyond that, it was encouraging to see that the most prevalent grading was ‘Satisfactory’. Responses to sub-part 5B proved the strongest with two-thirds of the answers graded ‘Good’.

5.6.4 In general candidate performance improved over the last 4 sub-parts, compared to performance over the first 4 sub-parts – although the challenged posed by sub-part 3B meant that candidate performance was actually weakest across the middle four sub-parts. Across the whole paper, the average number of poor, unacceptable, and ‘did not answer’ responses (collectively ‘unsatisfactory responses’) per sub-part was 37/108. Sub-part 5B had the lowest proportion of unsatisfactory responses at just 1/9. Sub-part 3B had the highest proportion of unsatisfactory responses at 8/9. Whilst the length and complexity of the assessment was not, on this occasion, regarded as an issue by the Exam Board, the CEB will keep the issue of the time candidates are allowed to complete the assessment under review.

5.7 Trend data on candidate performance

Candidate Journey			
	Apr-22	Jul-22	Oct-22
Candidates First Sitting	112	21	7
Candidates Resitting	0	4	2
Total Number of Candidates Sitting	112	25	9
First Sitting Candidates Passing	107	19	5
Resitting Candidates Passing	N/A	4	2
First Sitting Candidates Failing	5	2	2
Resitting Candidates Failing	N/A	0	0
Failing Candidates who had Accepted Extenuating Circumstances	1	0	1
Total Number of Unique Candidates to Date	112	132	139
Total Number of Candidates Passing to Date	107	130	137
Candidates not yet deemed Competent	5	2	2

5.7.1 The above table shows that, to date, 139 pupils have attempted the Professional Ethics Exam, accounting for 146 assessment entries (139 attempts plus 7 resit attempts). All candidates entered for either the initial April 2022 assessment or the July 2022 assessment have now been graded as “Competent”. At present there are two candidates, who attempted the assessment for the first time in October 2022 who remain graded as ‘Not Competent’. These candidates will have their second opportunity to sit the exam in January 2023.

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

The Chief Examiner confirmed that she was content that all standard setting, marking and review processes were followed satisfactorily and there was nothing to cause concern about any of these individual stages following the sitting of the October 2022 Professional Ethics Assessment.

5.9 Comments from the 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, and a very small cohort, any attempt at correlation (i.e., 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.

5.10 Comments from the Independent Observer

The Independent Observer confirmed to the Board that he was happy to endorse the results.

6. COHORT AND CANDIDATE PERFORMANCE OCTOBER 2022 SITTING

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

Total Number of Candidates	9
Number Passing	7
Passing Rate (%)	78%

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 a holistic review (see further 4.3.3, above) 33% of candidates were deemed to be automatic passes, and a further 44% were deemed to have passed following a holistic review of their scripts.

Automatic Fail	2
Fail at Holistic Review Stage	0
Pass at Holistic Review Stage	4
Automatic Pass	3

6.1.2 The tables below show the breakdown of 'Competent' candidates by reference to the number of answers graded as 'Good' or 'Satisfactory' and the breakdown of 'Not Competent' candidates by reference to the number of answers graded as 'Unacceptable' or 'Poor':

Number of Passing Candidates With	
5 Satisfactory/Good Responses	0
6 Satisfactory/Good Responses	0
7 Satisfactory/Good Responses	1
8 Satisfactory/Good Responses	3
9 Satisfactory/Good Responses	1
10 Satisfactory/Good Responses	1
11 Satisfactory/Good Responses	1
12 Satisfactory/Good Responses	0

Number of Failing Candidates With	
3 Unacceptable/Poor Responses	0
4 Unacceptable/Poor Responses	0
5 Unacceptable/Poor Responses	0
6 Unacceptable/Poor Responses	1
7 Unacceptable/Poor Responses	0
8 Unacceptable/Poor Responses	1
9 Unacceptable/Poor Responses	0
10 Unacceptable/Poor Responses	0
11 Unacceptable/Poor Responses	0
12 Unacceptable/Poor Responses	0

6.1.3 The minimum pass profile for a script not referred for holistic review for this sitting was a combination of 1 sub-part answer graded 'Good', 10 graded 'Satisfactory', and 1 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', 6 sub-part answers graded 'Satisfactory', 4 sub-part answers graded 'Poor', and 1 sub-part graded 'Unacceptable'. Two scripts were classified as fails without being referred to holistic review. One because it contained 3 "Unacceptable" answers, and the other because it contained 4 "Poor" answers (see 4.3.3 above). All candidates graded overall 'Not Competent' were graded 'Unacceptable' or 'Poor' on at least 6/12 sub-parts, and all candidates graded overall 'Competent' were graded 'Satisfactory' or 'Good' on more than half of the 12 sub-parts.

6.2 Feedback from candidates

6.2.1 The Examinations Manager reported that feedback was solicited from all candidates via a survey immediately following the exam, with reminders sent a week later. Only three of the 9 candidates provided exam feedback.

6.2.2 A summary of the general feedback indicated that:

- (a) There was some concern in relation to the relevance of the scenarios to pupil barristers.
- (b) Some candidates felt there was too much material to cover in the time allowed for the examination

Professor Mike Molan
 Chair of the CEB
 13th December 2022

Appendix 1

General Descriptors

Grade	Descriptor
Good = “More than Competent”	Content exceeds the criteria for a Satisfactory answer i.e., “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 (e.g., 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>

