

Professional Ethics Assessment in Pupillage

Information for Pupil Supervisors

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Welcome

- Context: where we are in the programme of Bar training reform
- Background of consultation/decisions made
- What we hope to achieve in this session and format of session

Presenters

- Professor Mike Molan, Chair of CEB
- Diane Nixon, Chief Examiner, Professional Ethics
- Natasha Ribeiro, Assessment Lead BSB
- Julia Witting, Head of Supervision BSB
- Charlie Higgs, Examinations Manager BSB

Chair: Dr Victoria Stec, Head of Authorisation BSB

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Introduction

- Teaching and assessment of Professional Ethics within the BPTC (pre-September 2021)
- Arrangements for teaching and assessing Professional Ethics for candidates commencing Bar Training from September 2020 onwards
- Advantages offered by having an assessment of Professional Ethics at the pupillage stage

Format of Assessment

Format

- Six questions each consisting of two sub-parts
- Open book
- 3 hours long
- Testing **application** of ethical principles
- NB not limited to one issue per sub-part

Mode

- Computer-based test
- Online
- In person – computer based (pen and paper available as an adjustment)

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Equal treatment

- Reasonable adjustments
- First-time needs assessments
- Registration
 - Pupils need to tell us about their adjustment requirements at least 2 weeks before the registration window opens.
 - Adjustments deadline: Tuesday 22 February 2022
 - Registration window: Tuesday 8 to Tuesday 22 March 2022

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Setting the paper

Quality Assurance

- Pre-paper confirmation meeting
- Paper confirmation meeting
- Post paper confirmation meeting

Post exam processes

Quality Assurance

- Standard setting (determining the pass standard)
- Marking and moderation
- Reviews
- Examination Boards

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Materials available from BSB

- Assessment Guidance
- Candidate Guide
- Policies
 - Adjustments (and appeals)
 - Extenuating circumstances (and appeals)
 - [Misconduct] (and appeals)
 - [Request for Review]
- FAQs page
- Syllabus (updated three months before exam date (end of January 2022))
- Sample question and answer
- Practice paper

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Checks

BTL Group, provider of our assessment platform

Tender Process (Winter 2020 - Spring 2021)

Mini pilot (Summer 2021)

Pilot (Autumn/Winter 2021)

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Registration for Exams and Sittings

Candidature

- Who needs to take the new assessment?
- Who does not?

Sittings

- 3 x per year (early January, late April, late July)
- **2022 sittings – 26 April, late July, late October**

Declaration at registration

- Candidates declare that they will have completed 3 months of pupillage at time they sit exam

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Rules for Sitting

Number of attempts

- No limit on number of attempts

Interruption of pupillage

- Employed Bar; Independent Bar – recommended good practice
- Longer periods of absence – determine impact on training
- Notify BSB

Status of unsuccessful candidates beyond 12 months

- Decision to be made by Chambers/employer
- Terms should be set out in pupillage agreement

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Fees

Fees

- Who pays?
- Re-sit fees (no fee for first two attempts, thereafter payment required)

Confirmation of results and feedback to candidates

Notification of results

- Provided to pupils via MyBar accounts
- Access for supervisors can be given by pupils

Unsuccessful candidates

- Feedback
- Provision of information to supervisor

Chair's Report

Chair's Report to be published after each sitting of the examination

- Available via the BSB website
- Details of the exam board's deliberations
- Statistical analysis of question performance
- Statistical analysis of cohort performance
- Overview of cohort strengths and weaknesses

Overall, the aim is to provide reassurance to stakeholders regarding the rigour, fairness and reliability of the assessment

- What else would be of use to stakeholders?

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Unsuccessful candidates

Appeals / Challenge

Pupillage beyond 12 months

- Pupillage agreement

How can pupil supervisors help pupils to prepare?

- Administrative procedures
- Preparatory materials
- Preparing for the exam
 - Practice exam
 - Syllabus
 - Discussions
- Build preparation in to training plan for pupils

Key dates

Adjustments deadline: Tuesday 22 February 2022

Registration window: Tuesday 8 to Tuesday 22 March 2022

Exam: 2pm on Tuesday 26 April 2022

Results: Tuesday 28 June 2022

Next sittings: Monday 25 or Tuesday 26 July 2022 (TBC)

Tuesday 25 October 2022 (TBC)

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Any questions?

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Professional Ethics Assessment in Pupillage

Information for Pupil Supervisors

Speaking notes for webinar held on 13 January 2022

Slide 1 **Title page**
No notes

Slide 2 **Welcome, context and background**

- An extensive period of consultation over several years from 2015 resulted in reforms to every element of Bar training.
- Changes in the academic and vocational components of Bar training are already in place and now it's time for us to implement a significant change to pupillage that was determined as a result of decisions made following consultation, namely the introduction of an assessment in Professional Ethics that must be passed before pupillage can be signed off.
- These slides hopefully give you a fuller picture of what the assessment involves and what pupils can expect, and how pupil supervisors can better support pupils during their pupillage.

Slide 3 **Presenters**
No notes

Slide 4 **Introduction**

- Building on the recommendations of the Wood Report, the BSB has been responsible for setting the assessment of Professional Ethics as part of the BPTC since the inception of the Centralised Examinations Board in 2011 and has been responsible for the marking of that assessment since 2017.
- The Future Bar Training Programme provided an opportunity to re-assess arrangements for the vocational stage and came to fruition with the launch of the successor to the BPTC, the Bar Training course, in September 2020.
- One of the most significant aspects of these changes is that Professional Ethics is now to be assessed at 2 points:
 - (a) First during the Bar Training course, where all candidates will be required to demonstrate proficiency in Professional Ethics to a threshold standard on courses designed, delivered and assessed by AETOs (course providers);
 - (b) Secondly at the pupillage stage.
- We are not planning any radical departure in the format of the assessment that pupils will be presented with – anyone familiar with the type of short answer questions used by the BSB in the assessment of Professional Ethics over the last 10 years will know what to expect.
- The new arrangements offer a number of advantages however, in particular:
 - (a) They build upon the experience of the BSB in designing and administering assessments in Professional Ethics developed since 2011.
 - (b) Addressing concerns raised in 2015 in the Richard Moorhead research project (“The Ethical Capacities of New Advocates”), the new arrangements allow for the assessment of Professional Ethics at a time when candidates, as pupils, are immersed in a professional setting, with access to the informal

support and advice that the profession can provide, and firsthand experience of practice.

Slide 5 Format and mode of assessment

- The centralised assessment is an exam comprising six questions, each having two sub-parts. All parts are equally weighted. Sub-parts within a question may or may not be connected.
- The exam is open book – the BSB Handbook is available in electronic format.
- The exam is 3 hours long. It is for candidates to decide how to apportion their time.
- Questions 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 answers.
- Candidates should 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.
- We emphasise that it is not just about identifying the problem and the relevant principles – candidates must apply those principles. It should also be noted that there may be more than one issue per sub-part.
- The assessment is a computer-based test. Candidates are given the choice of sitting either a remotely proctored exam or in person in a test centre, but we strongly recommend sitting in person.
- If in person, provision can be made for candidates who require pen and paper mode (as part of an adjustment).

Slide 6 Equal treatment

- Our (reasonable) Adjustments policy will be available on our website shortly. We will make arrangements for disabled pupils and pupils with other medical conditions to ensure that they are not at a disadvantage.
- Pupils need to let us know what they need to perform at their best during the exam; they will need to provide evidence to support the disability (for example documentation which states they have dyslexia, and the specific adjustments they require).
- Examples of adjustments are an extension of time to complete the exam, regular breaks (please note that all candidates may take breaks), different font colours and sizes, a separate room or assistive technology in a test centre. We can also provide scribes and readers in test centres.
- We will also make other arrangements for candidates upon request, for example arrangements to support candidates who are pregnant or nursing.

- The information will remain confidential.
- We will consider all requests on an individual basis.
- It is very important that candidates tell us about their required adjustments as early as possible, as the exams team will schedule exams with adjustments for candidates – they cannot do this themselves (apart from the standard adjustments to fonts).
- We are aware that it is not unusual for pupils to have completed their academic career, and then start to struggle once they start pupillage, never having considered needing a needs assessment (for dyslexia or other disabilities) before. We would like to raise awareness of this and ask you to support your pupils in obtaining diagnoses as early as possible to have evidence to support their adjustment requests.
- Pupils need to tell us about their adjustment requirements at least 9 weeks before an exam (and to submit their evidence at this point).
- The registration window opens online 7 weeks before the exam date for those sitting for the first time. It closes 5 weeks before the exam. At 8 weeks before the exam, we will notify pupils of the application of their adjustments.
- For the exam in April 2022, the registration opens on Tuesday 8 March, and will close on Tuesday 22 March.

Slide 7 Setting the paper – quality assurance

- Turning to the initial stage of an examination cycle, namely setting the paper and addressing quality assurance.
- Our question writers, examining team, marking teams, standard setters are legal practitioners and/or professional legal academics. An Assistant Chief Examiner is a practising barrister.

Pre-paper confirmation

- Periodically, question writers undergo training provided by the examining team; this includes a presentation regarding key principles in assessment theory, a discussion/walk-through of the anatomy of a question and participation by all question writers in writing questions during the session.
- Question writers produce questions based on specified syllabus topics allocated to them; they write material which includes the scenario, question(s), an indicative answer and suggested mark scheme; these materials are submitted for review by the examining team; Assistant Chief Examiners and Chief Examiner.
- We then devise a paper. The examining team discusses all of the content, applying core assessment principles including the breadth of syllabus cover, any overlap between questions and the overall difficulty of the paper. Following the creation of the paper, we then move to the paper confirmation meeting itself.

Paper confirmation meeting

- Once the examining team has drawn up the draft exam paper, we convene a paper confirmation meeting where we go through each proposed question line by line, word by word, to ensure that the questions are:
 - fit for purpose;
 - suitably rigorous;
 - fair to candidates; and
 - make sense.
- We also review the proposed mark scheme to ensure that what the examining team intend to elicit by way of response is appropriate and proportionate.

Post paper confirmation meeting

- Once these meetings are concluded we have a paper that is ready for post-paper confirmation meeting checks.
- Syllabus check: our Syllabus Team reviews the paper to ensure that all of the questions are on-syllabus and that there is a good range of syllabus coverage.
- Paper scrutinising: the exam is sat under exam conditions and feedback is provided from a candidate's perspective.
- Proof reading.

Slide 8 Post exam processes

- The exam is sat by candidates. Following this is a process of standard setting.
- Standard setting is the process of differentiating between levels of candidate performance ie competent or not competent. It ensures that standards are maintained over time.
- The focus is on the minimal level of competence – whether a candidate has demonstrated that they are ready for practice. Here, the question is whether they are “comfortably safe” ie competent.
- Standard setting – an exercise in which standard setters identify for each sub-part **the pass standard** – what by way of content they would expect the minimally competent (equated with comfortably safe) candidate to achieve by way of response to the question asked. They do not do this in isolation.
- First bear in mind who they are. Standard setters are drawn from a pool of barristers and legal academics.
- Secondly, they will bear in mind the context in which the assessment is sat, namely:
 - Candidates have had exposure to professional practice for a minimum of 3 months, having successfully completed the vocational element of training, including foundation level Professional Ethics.
 - The assessment is a 3 hour long open book exam.
 - What the assessment is testing – **application** of knowledge.

- Thirdly, they conduct the exercise by reference to the Threshold Criteria (Professional Statement) as well as the classifications of competent and not competent respectively (see guidance already provided).
 - NB, We do not expect responses to be of a standard of a QC or leading junior, but someone who has completed 3 m of pupillage and who is "comfortably safe."
 - First part of the exercise – independently of each other standard setters will “write” their content ie what qualities they consider this [minimally competent] candidate should achieve. They don't have sight of what the examining team have produced by way of mark scheme or indicative content (undertaken before and at the paper confirmation meeting). They will have a sample of candidate answers to look at for these purposes.
 - Second stage - all standard setters meet and agree the pass standard for each sub-part. A mark scheme/guidance is produced – this comprises the content for a competent answer, as well as content for a not (yet) competent answer along with any specific sub-part marking guidance considered appropriate.

Marking and moderation follows

- Markers are combined pool of barristers and academics. A marker will form part of a team which will mark 1 question only (ie 2 sub-parts). This enhances the quality of the marking.
- Each marking team is led by a team leader, an experience marker, whether barrister or academic, who also marks scripts, and moderates the marking of their team. The examining team also moderates the marking of the team leaders.
- Before any ‘live’ marking is done, a markers’ meeting takes place. Markers 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 on the scheme.
- All scripts are double marked.
- Markers are instructed to escalate scripts to their team leader where guidance or clarification is required. Team leaders escalate to the examining team, if necessary. Clarification and/or guidance is provided by the examining team to all relevant markers when required.

Reviews

- Once marking and moderation are completed, holistic reviews are undertaken of borderline scripts ie those narrowly passing and those narrowly failing.

Examination boards

- Once the marking has been completed, we are ready to hold the exam board – attendees include the examining team, the BSB exams team, our Psychometrician (who helps prepare the data analysis on how each question has performed); our Independent Observer (to ensure due process) and senior BSB officers in their governance capacities.
- The board will receive reports on how the cohort of candidates has performed in each question – assisted by the statistical analysis prepared by the Psychometrician – this covers issues such as the reliability of the examination as a whole, and the extent to which individual questions were able to discriminate between weak and strong candidates.
- If necessary, the exam board can agree interventions (such as scaling marks up or down for all candidates) if there is evidence to suggest that a question may have been flawed in some way, or there were issues with the actual sitting of the examination.
- The exam board will also receive details of the standard setting and moderation processes and will review this to ensure that processes have been followed as required.
- Once the data has been considered, and any suggested interventions discussed, the results will be confirmed by the exam board. The exam board does not have an expected or target passing rate for the assessment.

Slide 9 Materials available from the BSB

- We sent you the draft assessment guidance. This sets out the learning outcomes in relation to the Professional Statement, the classification of profiles of answers, a description of our standard setting process, and a brief description of the treatment of incorrect answers.
- We also sent you the draft candidate guide. A final version will be uploaded to our website at the end of the month. This sets out how to request adjustments, how to book, personal data, practice assessments, non-attendance, extenuating circumstances, complaints, results, appeals, resits and guidance for sitting in a test centre, or remotely proctored. Pupils have been involved in testing the guidance.
- Please do not share the draft information with your pupils yet; they should refer to the finalised versions on our website.
- A link to our webpage with information about the Ethics exam was sent with your invitation. <https://www.barstandardsboard.org.uk/training-qualification/becoming-a-barrister/pupillage-component/intro-of-professional-ethics-assessment.html>
- The FAQs can be found here as well as the syllabus. Also on the webpage, is a paper we published in April 2020 which sets out our approach to assessing Ethics – the background to the exam, the assessment parameters, the options we considered and our rationale for using short answer questions.
- The policies will be uploaded to the webpage in due course.
- Our extenuating circumstances policy gives examples of eligible circumstances, and examples of acceptable evidence to support a candidate's application as well as

case studies. The policy sets out the timing of an application, how to submit one and details of the Panel and outcomes from the Panel.

- How do pupils access the practice exam? It will be hosted on a digital platform – pupils will be able familiarise themselves with the same virtual environment as their real exam. They will need to be scheduled to take a test – they'll be given a keycode to access the practice exam – we will email this to them once they have registered to take the exam. We will have a record of who has taken the test. We will be able to give more details of the practice exam shortly. *NB We will also permanently host the unmarked practice test on our website within the next few weeks. The computer-based practice test will be available up to two weeks before each exam sitting. There will only be one opportunity to sit the computer-based practice test before each exam sitting.*
- There will be sample questions with model answers to that the candidates are aware of the standard to aim for.
- We do not prescribe a preparatory course and have not played any part in the development of preparatory materials offered by others. The ICCA has stated that it is on track to make available preparatory materials next month. It will be free and available to all pupils who need to take the exam. Pupils should contact the ICCA for more information.

Slide 10 Checks

- We have learned many lessons from our experience with online exams in 2020. We took these into account when, in December 2020, we issued an invitation to tender to supply online assessments (amongst other examination solutions). The invitation clearly set out our requirements, particularly regarding the integrity of the assessments and accessibility for candidates. In writing the invitation, and in our selection process, we put equality and diversity at the forefront of our plans. We have ensured that our supplier has an accessibility expert on their team.
- The pupillage exam differs from those at the vocational stage in that we can communicate directly with candidates about their adjustment and other needs. Breaks are permitted for all candidates. Our chosen test delivery system is compatible with screen reading software for candidates with visual impairments sitting in test centres.
- We have been working towards the exam with our supplier, the BTL group, for nearly a year now. We have found them to be helpful, flexible and understanding.
- BTL has experience of working with highly regulated organisations across a range of sectors, including law, accountancy and medicine. It provides solutions to awarding bodies including CILEx, the Institute of Chartered Accountants Scotland, the Institute of Chartered Accountants in England and Wales, the Royal College of Paediatrics and Child Health, and the Association of Project Management.

Mini pilot

- In the summer we undertook a mini pilot to test aspects of the post exam process and marking in particular; gained useful feedback from markers and team leaders who led marking teams.

Pilot

- A fuller pilot was conducted in the autumn where we ran a full paper ie six SAQs with two sub-parts; approx. 40 dummy candidates submitted scripts; we piloted and received feedback on the full candidate experience including taking the exam in a test centre, taking the exam at home, being remotely proctored, setting up and testing personal laptops, and taking the exam with adjustments. Post exam processes in full ie standard setting and marking took place; teams of markers and TLs appointed.
- We tested the online platform not only for candidates sitting but also the systems for other users post-sit (online marking, moderation, escalation etc); this way we were able to check quality assurance for the standard setting process, reliability/consistency of marking as well as moderation.
- We gathered feedback from those involved in the pre and post exam processes and gained useful insight.

Slide 11 Registration for exams and sittings

- It is only pupils who commenced Bar Training from 2020 onwards or Transferring Qualified Lawyers (TQLs) who completed the Bar Transfer Test (BTT) from August 2021 onwards who must take this exam.
- Some pupils who are TQLs may have been given a waiver by the BSB so may be exempt from taking the exam.
- BPTC graduates are not required to take the exam; they have already passed a centralised exam in Professional Ethics.
- There is some flexibility built in to the 3 months point.

Slide 12 Rules for sitting

- No limit on number of attempts (other than that of length of pupillage).
- There are 3 sittings each year so pupils will have further opportunities to resit the exam if they do not pass first time. Pupils must pass the exam in order to be signed off from their pupillage. If they have not successfully passed the exam before the end of their pupillage, it will be for their chambers or employer to decide if they wish to fund an extension to their pupillage to enable them to do so. That should be set out in their written pupillage agreement.
- If their pupillage is extended or interrupted, you will have to think about the effect on your training plan and when the Ethics exam fits in (see slide 17).

Slide 13 Fees

- There is no fee for a first or second attempt. After that, the fee for any resits will be £832. It will be for you to agree with your pupils as who pays for any subsequent resits. This should be set out in their written pupillage agreement.

Slide 14 Confirmation of results and feedback to candidates

- Pupils will need to log in to their MyBar accounts to view their training record to see their result (competent / not competent). They will need to give you access to their account to see their record.
- If a candidate has not passed, we will provide feedback which is given with the intention to improve their performance. We would want to share this feedback with you (and will need permission from the candidates to do so) – so you can assist with any remediation. The feedback will be given via email.

Slide 15 Chair's report

- A Chair's report will be issued after each sitting of the Professional Ethics exam. The report will be publicly available via the BSB website
- It is expected that the report will contain details of:
 - The deliberations of the exam board – including any agreed interventions and the rationale thereof.
 - Details of the statistical analysis of cohort performance including number of candidates, overall passing rate, the reliability of the assessment, and over time, trend analysis.
 - It is also envisaged that the report will provide a broad overview of candidate performance across each question in the assessment.
- The report will seek to provide:
 - Reassurance to stakeholders on rigour, fairness, and the following of due process
 - General feedback to candidates on how their cohort performed
 - General guidance on areas of candidate strength or weakness.
- Beyond that we would be very interested to hear from those attending what else they would like to see included that they think might be helpful, either to their pupils or to themselves as pupil supervisors.

Slide 16 Unsuccessful candidates

- Challenges against the academic judgement of examiners are not permitted.
- We do not offer any re-marking of scripts.
- Candidates can request a clerical error check whereby we will check if results have been captured and processed correctly.
- We have a request for review process used for centralised exams at the vocational stage which is likely to be used for Ethics candidates; it is currently being reviewed by our in-house legal team and will be published in due course. The only permissible ground for a request for review of the decisions taken by the CEB in confirming cohort marks is that the CEB acted irrationally and/or in breach of natural justice. *NB the process is to be confirmed shortly.*

- Pupillage beyond 12 months – pupillage agreements should set out what Chambers/employers are willing to do to support their pupils if they have not passed the assessment during their 12-month pupillage.

Slide 17 How can pupil supervisors help pupils to prepare?

- We have a list of eligible candidates (pupillages registered who have graduated from the new Bar courses) and will send reminders before the booking window opens and before it closes.
- We must stress how important it is to ensure that pupils know what they need to do and when, like registering their pupillage and applying for a provisional Practising Certificate. So, whilst it is their responsibility, please make sure you guide your pupils to read and understand the latest and most up to date information available on our website, so that they know how they can prepare for the exam, when to book, how to apply for reasonable adjustments, how they will get their results, etc.
- You should also ensure that your pupillage agreements are up to date and cover what happens if a pupil does not pass the exam within the normal period of pupillage.
- Rules C113-114 address expenses related to pupillage. We specify the minimum funding level, so if you already pay above the minimum, you will need to be clear in your pupillage agreement who is expected to cover costs such as funding travel costs to test centres.
- We appreciate that you will want to reassure and support your pupils, but may feel that, at this point, you are not sure what to expect. We would stress that the centralised Ethics exam in pupillage is not a radical change from the old centralised exams that were taken during vocational training. Those of you who completed the BPTC course will be familiar with the type and format of questions. Also, pupils will already have taken an AETO-set assessment in ethics as part of their new-style Bar training course, so they will be familiar with being assessed on Ethics.
- We have explained what resources will be available to help pupils to prepare. We are not prescribing a course, we are not prescribing what AETOs should be doing to help their pupils prepare, we are not prescribing how much time pupils need to prepare, just as, in general, we do not prescribe what a pupil’s training plan should look like. We do expect that pupil supervisors will already be having relevant discussions with pupils about ethics in the course of pupillage, just as they have always done.
- What you may wish to do is to think about whether you want to adjust your pupillage training plan to reflect the timing of the Ethics assessment and if you feel you want to build in anything different to help your pupils to prepare, that will be for you to determine.

Slide 18 Key dates
No notes

Slide 19 Any questions?
No notes