

**BAR
STANDARDS
BOARD**

REGULATING BARRISTERS

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

**Pupillage stage Professional Ethics
April 2023 Sitting**

1. EXECUTIVE SUMMARY

The fifth sitting of the pupillage component Professional Ethics examination was held on Thursday 25 April 2023 at 2pm. The summary of results is as follows:

Total Number of Candidates	59
Number Passing	42
Passing Rate (%)	71.2%

The April 2023 sitting saw 59 candidates attempting the assessment. The passing rate is the lowest recorded across the 5 pupillage stage assessments of Professional Ethics since the first sitting in April 2022. There were no interventions required in respect of any cohorts of candidates for the April 2023 sitting and no interventions required in respect of any of the assessment items. For more detail on candidate journey data see 5.7.1.

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. 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, for all 2023 sittings, was provided to candidates in September 2022: see BSB-Professional-Ethics-Pupillage-WBL-Assessment-Syllabus-22-23.pdf (barstandardsboard.org.uk)

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. From the January 2023 sitting examiners have adopted a standard format stem for each question: *“Identifying the relevant ethical issues and applying them to the facts, explain what ethical issues arise [for A / for A and B] in this scenario and how they should be resolved?”*

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 to 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 Professional Ethics Examining Team. 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 Examining Team (which has a strong practitioner representation). The 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 Examining Team.
- 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 provided with copies of the draft mark scheme and indicative content statement produced by the Examining Team and confirmed as part of paper confirmation process and are also provided with a sample of candidate answers for each sub-part. During this period, members of the Examining Team review a wider sample of candidate answers, collecting additional material or content for discussion. Responses from the standard setters regarding expected content for each sub-part is collated by the Examining Team (along with the additional content) and circulated for discussion at a plenary meeting attended by all standard setters, the Examining Team, 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. Prior to the meeting, markers are provided with a number of sample scripts (drawn from the candidate cohort) which they mark independently. Markers submit the marks and the feedback to be given to the candidate before the meeting. "Think-aloud marking" takes place using the sample scripts along with further samples 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. Team leaders meet with the Examining Team in advance of the markers' meeting and are given guidance on how to perform their role. Feedback is given to all markers during the moderation/calibration process which takes place following the markers' meeting. The marking by team leaders is first moderated by the Examining Team, and then (once the Examining Team is satisfied) team leaders go on to

moderate their marking teams. The Examining Team also continues to carry out dip sampling during the live first marking period. 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 Examining Team, if necessary. Clarification and/or guidance is provided by the Examining Team to all relevant markers when required during the process. Where an answer is graded 'Unacceptable' by two markers, this is escalated either to the team leader or, where the team leader is one of the pair of markers involved, to the Examining Team either to approve the Unacceptable grade or otherwise.

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 Qualifications 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>

4.8 Release of Results and Feedback to Failing Candidates

Results are issued using MyBar—the online self-service portal for Barristers and Bar Training Students. Following the Exam Board, results are uploaded to candidates' MyBar Training Records and candidates are notified that they can view them by logging into their MyBar account. Candidates may also share their result with the Pupil Supervisor or others, using their unique Training Record ID.

Candidates who have failed the exam receive feedback on each of the sub-parts which were scored 'Poor' or 'Unacceptable'. Candidates who have failed the exam three times are also provided with more holistic feedback covering all three attempts they have made at the exam.

5. THE APRIL 2023 WBL PROFESSIONAL ETHICS EXAMINATION RESULTS

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

The Examinations Manager confirmed that 65 candidates had registered to sit the April 2023 examination, of whom 59 sat and completed the exam. Two candidates cancelled their exam in advance and four candidates were absent. Of the candidates who sat the exam, 42 (71%) sat Online Invigilated (OI) exams, and 17 (29%) sat Test Centre (TC) exams. TC candidates sat across six centres. There were no requests for pen and paper examinations for the April 2023 sitting, although some candidates did request paper copies of the Handbook as an adjustment. Whilst no significant problems were encountered with the administration of the assessment, three cases related to technical problems accessing the BSB Handbook, and one related to a candidate who was using a "File Attach" version of the test were reported. The Examinations Manager clarified that it was unclear whether all, or only some, of the candidates experienced issues with the Handbook, so the approach of the Exams team had been to offer extenuating circumstances only to those proactively applying for them. The problems were thought to be due to updates to the website that occurred the day before the exam. The Exams team has ensured that website updates will not happen near the date of the exam in future.

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 highlighted in the "Red/Amber/Green" ('RAG') report and confirmed the Online Invigilated proctors had advised of two 'red flag' and no 'amber flag' incidents. Both 'red flag' incidents were reviewed by the Senior Examination Officers (SEOs), who also reviewed a random sample of 4 'green flags.' Both 'red flag' incidents were assessed by the SEOs, the conclusion in each case being that no academic misconduct had been evidenced and therefore no candidates were referred for further investigation.

5.3 Report from the Examination Manager on Extenuating Circumstances

The Examinations Manager confirmed that there had been four extenuating circumstances requests, three of which related to individual candidates and one of which related to a group of five candidates. Three of the cases related to technical problems with the BSB Handbook. One case related to a candidate using a “File Attach” test form as a reasonable adjustment. The guidance the candidate had been sent by the BSB was accurate for OI assessment; however, the layout of the screen in a TC exam - which the candidate sat - was not the same as described in the guidance. All four requests for extenuating circumstances were granted.

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. Following standard quality assurance processes, once candidates had completed the examination, a sample of scripts was selected for the purposes of standard setting. For each sub-part, eight candidate responses were chosen. A team of standard setters comprising legal practitioners and academics was selected. The team was provided with a briefing on their tasks for the standard setting process. They were provided with the exam paper, the sample scripts as well as the indicative content and suggested mark scheme drafted by the examining team as part of the paper confirmation process. Following the briefing, the standard setters undertook the first part of standard setting, namely the task of identifying, independently of each other, the standard expected for each of four level descriptors for each sub-part of the paper. The Chief Examiner noted that part of the generic stem now used for all Professional Ethics examination items (see 3.2, above), asked candidates to reflect on how the ethical issues should be resolved, and that care was taken to ensure that had this in mind when determining the constituent elements of a ‘Satisfactory’ answer. The examining team collated the material submitted by individual standard setters, which comprised commentary and suggestions regarding the content for each descriptor for each sub-part. In addition, the examining team checked a wider selection of scripts, so that the available pool of ‘observed’ responses for each sub-part was as wide as possible. Any additional matters were recorded for discussion at the standard setting meetings. The meetings, involving all standard setters and the examining team, took place and were also attended by the Independent Observer. The content for each sub-part was discussed and agreed by standard setters.

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

The Chief Examiner confirmed the marking process had gone smoothly, with no issues of substance arising.

5.5.1 A sample of candidates’ answers was selected for discussion at the markers’ meeting. Team Leaders were allocated two items each and provided with written instructions about their role. Team Leaders attended a general Team Leader briefing as well as a separate meeting with a member of the examining team to discuss the particular question they had responsibility for. As regards marking, all markers had to sample mark eight responses for each of the two sub-parts they were marking and submit the grades awarded and

feedback given prior to the markers' meeting. At the markers' meeting, following a general briefing session for all marking teams, each marking team consisting of the Team Leader and markers, along with a member of the Examining Team, took part in individual discussions relating to the operation of the mark scheme of the question they were to mark. This was a "think aloud" process in which individual markers talked through the sample answers and discussed the grade they awarded, based on the content of the mark scheme. Clarification was provided, where necessary, on the operation of the mark scheme. Additional answers provided by the candidature were provided for discussion and grading once the earlier set of samples had been considered. Following the markers' meeting, the examining team discussed and amended the mark scheme to provide guidance as to how to address particular issues which had arisen during the markers' meeting.

- 5.5.2 Team Leaders then undertook a small quota of marking which was moderated by a member of the examining team who also provided feedback not only on the application of the mark scheme but also the quality of commentary/feedback on the response. All markers then marked a small number of responses which was moderated by the Team Leader. Feedback along a similar vein was provided to all markers. First marking then took place. A small number of markers were invited to undertake a further quota of marking for a second moderation and having completed this exercise satisfactorily they proceeded to complete their first marking. Where necessary, discussions between Team Leaders and the Examining Team took place regarding the operation of the mark scheme during and following this calibration exercise, and further guidance was provided to all affected markers in these circumstances. Responses which were discussed and resolved during the calibration process were submitted as final grades by either the member of the Examining Team or Team Leader responsible for the relevant question.
- 5.5.3 The Examining Team also undertook dip sampling of the marking teams and Team Leaders following moderation and during the live first marking period. Where required, individual markers were provided with appropriate direction in relation to specific issues arising out of their marking. Following first marking, every response not already "submitted" as part of the calibration process was marked by a second marker. Discussions then took place between first and second markers where there was disagreement between them as to the appropriate grade to be awarded for an answer. Grades were agreed between markers. Where a response was graded "Unacceptable" by two markers, this was escalated either to the Team Leader or, where the Team Leader was one of the pair of markers involved, to the examining team either to approve the Unacceptable grade or otherwise. Following agreed marking, all results were collated according to the number of Good, Satisfactory, Poor, and Unacceptable answers achieved.

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 full details of the questions used in the assessment, although the broad syllabus area under consideration is identified.

SAQ 1A							
Unacceptable		Poor		Satisfactory		Good	
#	%	#	%	#	%	#	%
2	3%	34	58%	18	31%	5	8%
<p><i>Broad syllabus areas covered:</i> Media comment (gC22); not misleading the court (CD1, rC3, rC5); confidentiality (CD6) (rC15.5); disclosure not in the client's best (CD2); duty to act with honesty and with integrity (CD3); duty not to behave in a manner that would diminish the trust and confidence that the public places in the profession (CD5); duty to retain independence (CD4).</p>							
<p><i>Key observations from Chief Examiner on cohort performance:</i> Most candidates successfully identified the application of the media comment guidance in this scenario, although fewer made specific reference to it. Most candidates also identified that there had been a breach of CD6, with the better candidates setting out the specific details about what the barrister had said which would lead to identification of the client. Better responses also talked about the application of CD5 when a barrister breaches confidentiality in such a public way. However, the question posed difficulty for many candidates because they failed to recognise that the court had already been misled and there was a need to correct the position. Candidates tended to provide answers advising the barrister how to avoid misleading the court at the next hearing. Some candidates mistakenly said that there was only a need to correct the position if it was a situation which attracted a mandatory sentence. The only 'Unacceptable' answer had suggested that the barrister had not breached confidentiality and stated that they did not need to correct the position. The Chair queried whether the examining team had any retrospective thoughts on the question or mark scheme given the performance data. The examining team's opinion was that the breaches in the fact pattern were clear, and most Poor answers did not sufficiently deal with the issue that the barrister had a duty to proactively correct the position. The team did not believe there was any reason to change this question before reuse, although it was suggested that it should not be used as the first question in a paper.</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	
#	%	#	%	#	%	#	%
3	5%	14	24%	37	63%	5	8%
<p><i>Broad syllabus areas covered:</i> Cab rank rule (rC28), (rC29.3.d); obliged to refuse instructions pursuant to rC21 (rC29); acting in the client's best interests (CD2); real risk of a conflict, arising from his personal interests and the client's conduct (rC21.2); maintain independence (CD4 &f CD5).</p>							
<p><i>Key observations from Chief Examiner on cohort performance:</i> Candidates were able to identify that the Cab Rank rule applied. Most candidates identified that there was an issue regarding a conflict of interest or a risk to the barrister's independence, and successfully considered the different ways in which CD2 and CD4 applied to the fact pattern. The Poor answers failed to then discuss the impact of that issue, namely that the barrister should at least consider not acting in the case. Some Poor answers stated that a risk to independence or conflict of interest could only occur if the issue related to the current case, rather than a past situation. Very Poor answers did not take the answer any further than consideration of the Cab Rank rule or identified a possible conflict for the barrister here, but then said he should carry on representing the client anyway, without addressing the issue of the barrister's independence.</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	
#	%	#	%	#	%	#	%
1	2%	16	27%	32	54%	10	17%

Broad syllabus areas covered: Duty to act in the best interests the client (CD2); the circumstances in which duties owed to clients will be overridden by the duty owed to the court; duty to provide a competent standard of work and service (CD7); overriding duty to the court; duty not to mislead the court (CD1); duty not to abuse role as an advocate includes not making statements or asking questions merely to insult (rC7.1); duty not make submissions, representations, or any other statement known to be untrue or misleading (rC6); restrictions on making prohibition on making serious allegation against any person (rC7.3); scope of instructions (rC21.5 and rC21.6); duty under CD3 to act with honesty and with integrity includes not advancing any contention not considered to be properly arguable (rC9); (CD4) counsel's duty to act independently and make his own decisions; duty under rC3.4 to take reasonable steps to ensure that the court has before it all relevant decisions and legislative provisions.

Key observations from Chief Examiner on cohort performance: Overall, the majority of candidates addressed the key issues in this scenario; however, a small minority (of unacceptable answers) failed to recognise the need to disclose the court of appeal authority, thus failing to identify the clear breach of CD1 were this to be repeated in practice. In other weak (Poor) responses, most failed to identify the two distinct ways in which the barrister was being asked to abuse his role namely in making an allegation where there was no basis for doing so, and the use of an irrelevant previous conviction to humiliate the witness. Standard setters were clear that competent candidates needed to recognise the two separate points. Accordingly, markers were instructed to ensure that candidates were able to demonstrate they had understood this when addressing the ethical issues.

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	
#	%	#	%	#	%	#	%
0	0%	27	46%	25	42%	7	12%
<p><i>Broad syllabus areas covered:</i> A gift unless of modest value can be seen to compromise a barrister's independence (gC18); (CD4) duty to maintain independence; (RC8) duty not do anything which could reasonably be seen by the public to undermine honesty, integrity (CD3) and independence (CD4); (gC20) giving or receiving of entertainment at a disproportionate level; observance of Social Media guidance); acceptance of gifts in breach of (gC16, rC8 and CD4); or such as would (CD5) diminish public confidence; (gC22) engaged.</p>							
<p><i>Key observations from Chief Examiner on cohort performance:</i> Candidates largely answered this question well; however, most poor candidates failed to address the social media point altogether. This aspect was a significant part of the fact pattern and standard setters were clear that in order to obtain a 'Satisfactory' grade, candidates needed to address this in their answer. Some candidates failed to address the proportionality issue or to recognise the differences in value between the offers and were graded poor as a result. A small minority concluded that acceptance of the holiday amounted to serious misconduct, which was also poor as this would not be the case here, given the fact pattern. The Board considered whether candidates, who had decided that the correct course of action had been to turn down the gift may, as a consequence, have not gone on to comment on the social media issue, (as declining the gift would have rendered comment on the social media issue irrelevant). The examining team's view was that the barrister's response to the client should refer to the social media point, regardless of their decision on accepting the gift. However, it was agreed that the wording of this question should be reviewed in order to better prompt candidates to address this point.</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	
#	%	#	%	#	%	#	%
1	2%	22	37%	24	41%	12	20%

Broad syllabus areas covered: Duties arising in respect of representation of an 'unregistered barrister; (Paragraph 3 of the Guidance on Unregistered Barristers); (CD3) duty to act with honesty and with integrity and not mislead clients as to status; Conduct Rules (and associated guidance) may apply regardless; (CD5) duty not behave in a way which is likely to diminish the trust and confidence which the public places in the profession; (CD9) duty to be open and co-operative with the BSB; duty to self-report to the BSB (RC64-70); residual duty to act with honesty and with integrity (CD3); (RC144) engaged - unregistered barrister providing legal services to inexperienced individual lay clients; RC8 duty not to do anything which could be seen to undermine honesty, integrity and independence; (RC16) duties under (CD20 and (CD7) to provide a competent standard of work and service, subject to duties to act with honesty and integrity (CD3), and to maintain independence (CD4).

Key observations from Chief Examiner on cohort performance: The question was reasonably well addressed, but poorer candidates failed to make the clear distinction between legal and non-legal services and/or to explain when the term 'barrister' can be used by an unregistered barrister and were either silent or failed to distinguish that the barrister could use the term 'barrister' when lecturing or acting as a mediator. By far the most common error which prevented candidates from gaining a Satisfactory grade was the failure to consider any remedial action to be taken by the barrister, which was specifically asked of candidates in the question. Some managed to identify what he should have done at the outset but did not carry that through into any statement of what he should do now. This error led to a number of candidates being marked as 'Poor' despite providing a good answer on the other issues in the question. A very small number of candidates focused unnecessarily on whether the barrister was permitted to delegate work to the student and addressed this in far too much detail, missing the main issues in the scenario. The better than competent answers highlighted the engagement of CD5, the fact that certain regulatory and insurance aspects do not apply to unregistered barristers, and that the previously acceptable term 'non-practising barrister' should no longer be used since it is likely to cause confusion.

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

SAQ 3B							
Unacceptable		Poor		Satisfactory		Good	
#	%	#	%	#	%	#	%
2	3%	30	51%	24	41%	3	5%
<p><i>Broad syllabus areas covered:</i> Duty to act with honesty and integrity (CD3); (rc9.1) duty to not knowingly or recklessly mislead or attempt to mislead anyone; (CD6) – breach of confidentiality; no counsel to counsel or counsel to solicitor confidentiality; (CD3) duties of honesty and integrity; decision to withdraw (rc26.6); (CD2) (and rc15) duty to act in the best interests of the client (gC83). Responsibility for professional conduct (rc20); balance of interests between CD1 and CD2 in use of information; misogynistic comments (CD5); duty to promote fearlessly and by all proper and lawful means the client’s best interests (CD2, rC15).</p>							
<p><i>Key observations from Chief Examiner on cohort performance:</i> To be graded Satisfactory, candidates needed to identify and discuss the operation of CD3 in that the barrister would have been in breach of CD3 if she had continued to read the document, and that she needed to disclose to her opponent that she had read the email and some of the opinion. Reference to the principles contained in gC86 needed to be made but a detailed demonstration of knowledge of the relevant case law was not required for a satisfactory grade. Those candidates who displayed a higher level of knowledge of the case law obtained a good grade. Candidates also had to acknowledge the opponent’s remarks about the barrister, and the mark scheme provided for a range of acceptable ways in which candidates could address this issue. As regards responses, there were several common errors the most frequent being a failure to address the comments made by the opposing barrister in any way, even though this issue was significantly underscored in the scenario, and a response required. This failure led to otherwise “passing” candidates being given a poor grade. Surprisingly there was a failure by several candidates to consider explicitly and to apply CD3: while reference was made to this core duty, it was key for a satisfactory grade that candidates explored the engagement of CD3. The mark scheme was generous as regards the acceptability of responses in this regard. The board noted the satisfactory discrimination indicator for this question, with 55% of passing candidates graded as Satisfactory or Good in contrast with 24% of failing candidates (ie it was the stronger candidates overall who were doing well on this question).</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	
#	%	#	%	#	%	#	%
1	2%	12	20%	40	68%	6	10%
<p><i>Broad syllabus areas covered:</i> Responsibility for professional conduct (rc20); avoiding professional embarrassment (rC21.9); cab rank rule and exceptions (rC21.9); duty to provide a competent standard of work and service (CD7); duty to inform a professional client of ability to carry out the instructions within the time requested (rC18); (gC83) duty to ensure the client is not adversely affected where there is not enough time to engage other adequate legal assistance; (rC25 & rC21.5) returning instructions (rC27.1.b); permissible withdrawal (rC26.3a); (CD7 & rC21.8) accept instructions where competent.</p>							
<p><i>Key observations from Chief Examiner on cohort performance:</i> Overall this question was answered reasonably well. Most candidates correctly identified and applied CD7 in relation to the issue of sufficient time, and most were also able to identify the practical steps that the barrister should take in order to resolve the ethical issues. The main weakness in relation to this question related to the identification of the competence of the barrister to deal with the instructions. Several candidates simply overlooked this point, despite often having dealt with the timing point competently. A smaller number of candidates failed to identify that if the barrister concluded that he had insufficient time and/or could not obtain an extension from the instructing solicitors, then the instructions would need to be returned. Better candidates also identified the engagement of CD10 in this scenario, and were able to offer further, sensible suggestions as to how the barrister should practically deal with the issue regarding timing/ his other commitments, making a distinction between his 'professional' commitments and other commitments.</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	
#	%	#	%	#	%	#	%
3	5%	35	59%	12	20%	9	15%

Broad syllabus areas covered: Duty to provide a competent standard of work and service (CD7). Need for client to provide clear instructions to support a fraud allegation (rC9.2c); failing to put client's case properly (rC15.1 and .2) duty to promote fearlessly and by all proper and lawful means a client's best interests; duty to put information before the court to maintain the perception of honesty and integrity and independence (CD3 and 4); duty under (rC7.2) not to make an allegation against a witness whom s/he has had the opportunity to cross-examine unless he has given the witness the chance to answer that allegation in cross examination.

Key observations from Chief Examiner on cohort performance: Overall this question was answered poorly. While most candidates were able to identify the relevant core duties (CD2 and CD7), many candidates failed to differentiate between the two allegations, and as such incorrectly concluded that the barrister could and should have put both allegations to the witness, despite the lack of any reasonable grounds in relation to the fraud allegation (rC7.3). Several candidates also failed to address the question of how the ethical issue should be resolved, in that they did not refer to the fact that the barrister, having been alerted to her omission, would need to apply to the court for permission to recall the witness so that the first allegation could be put to him. Stronger candidates ensured that they dealt with each allegation separately, arriving at the correct conclusion in relation to each and outlining the steps the barrister would need to take to correct her error. The best candidates also gave further, practical advice regarding the need to explain to the client the reasons why the allegation amounting to fraud could not be put, and regarding the need for the barrister to avoid letting her concern for her own interests deter her from correcting the position. The board was satisfied with the discrimination for this question, with 45% of passing candidates graded as Satisfactory or Good in contrast with 12% of failing candidates.

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	
#	%	#	%	#	%	#	%
23	39%	9	15%	26	44%	1	2%
<p><i>Broad syllabus areas covered:</i> Duty to act in the best interests of each client (CD2) and to provide a competent standard of work and service (CD7); duty to keep the affairs of clients confidential (CD6); duty to protect the confidentiality of each client's affairs (rC15.5); provision of advice in breach of CD7.</p>							
<p><i>Key observations from Chief Examiner on cohort performance:</i> Most candidates successfully highlighted the operation of CD2, CD6 and CD7 within the scenario and dealt with these generically. The main issue that arose in this sub-part was candidates drawing a conclusion that the disclosure by the husband gave rise to a conflict of interest which required the barrister to withdraw immediately from representing either or both parties. This clearly would place the interests of justice at risk and accordingly candidates who adopted this approach were deemed to be unacceptable. Significant consideration was given to whether this could be avoided; however, a withdrawal on the day of trial where the barrister has no valid reason to do so would clearly breach CD1, CD2, CD7 and CD10. Those candidates therefore had to be graded unacceptable in respect of this sub-part, given the significant impact that withdrawal would have on the administration of justice in this case. The Chair queried whether a statement that the barrister should withdraw constituted an Unacceptable answer. The examining team's view was that, given that the facts stated that the disclosure was made on the day of the trial, the barrister's withdrawal would place the interest of justice at significant risk, and this therefore constituted a dangerous answer. The board's opinion was that the question and mark scheme were valid and tested a fair point. Based on the performance statistics, the Psychometrician was also satisfied that there was sufficient discrimination for this question, with 52% of passing candidates submitting Satisfactory or Good answers in contrast with 29% of failing candidates.</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	
#	%	#	%	#	%	#	%
2	3%	15	25%	34	58%	8	14%
<p><i>Broad syllabus areas covered:</i> Duty not to take on work outside sphere of competence (CD7 and CD2) and (rC21.8). Public access accredited work (rC21.7) and (rC120) public access training; duty to ensure the client is able to make an informed decision about whether to apply for legal aid or proceed with public access (rC120.3). Public access training (rC121) barrister with less than three years standing - qualified person within Rule(S22); waiver from the requirement to have a qualified person under (rC121); duties under CD4 to not future lucrative work to influence the acceptance of instructions. Duty under CD10 to carry out work competently and in such a way as to achieve compliance with legal and regulatory obligations; breach of CD5 to accept the instructions without necessary experience.</p>							
<p><i>Key observations from Chief Examiner on cohort performance:</i> Candidates were required to identify that the barrister must not accept the instructions if he is not competent to do so as he would not be able to offer a competent standard of work, bearing in mind the complexity of the case, his limited experience, and the absence of a professional client. Candidates also needed to identify that the barrister had to act with independence and should not let the clerk's comments about future lucrative work affect his decision on whether he should accept the instructions. Candidates were required to conclude that the barrister should not accept the instructions to act. Overall, markers found that candidates performed well in this question identifying the relevant core duties and ethical principles. Where candidates fell into the poor category, they were either concluding that the barrister was able to act in the case, which clearly was not appropriate in these circumstances, or failing to provide any conclusion at all. Some candidates also failed to consider the independence point, missing this essential point altogether. The discrimination for this question was clear, with 74% of passing candidates graded as Satisfactory or Good in contrast with 12% of failing candidates.</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 6A							
Unacceptable		Poor		Satisfactory		Good	
#	%	#	%	#	%	#	%
5	8%	21	36%	17	29%	16	27%

Broad syllabus areas covered: duty to act client's best interests (CD2) and to provide a competent standard of work and service (CD7); awareness that client may find legal proceedings difficult and stressful (gC41); failure to answer a vulnerable client's questions likely to diminish the trust and confidence which the public places in counsel and the profession (CD5); duty to maintain independence (CD4). Dealing with witnesses (CD3 and CD5); duty not to do anything which could reasonably be seen by the public to undermine counsel's honesty, integrity (CD3) and independence (CD4). Paying money or offering benefits in kind to any witness (rC9.6). rC9.4 prohibition on rehearsing or coaching a witness in respect of their evidence.

Key observations from Chief Examiner on cohort performance: Most candidates successfully identified that the client was vulnerable and went on to explain the steps that should be taken when dealing with a vulnerable witness, thus going beyond what was required for a satisfactory grade. This was the central focus of many answers. The need to ask for time and/or an adjournment was universally identified, but the reasons for that were generally linked to vulnerability and/or CD1 (not wasting the court's time) rather than CD7, and the barrister's reluctance to ask a grumpy judge for more time. A very small number of candidates identified CD4 as relevant in respect of the judge's response, and a larger number did so in respect of the barrister's lunch arrangements, correctly identifying the barrister's own interests were irrelevant, but linking this to CD2. The CD4 point needed markers to carefully review the script and look holistically at the content presented. In the second part of the question almost all candidates recognised that the barrister could not coach the witness, and applied CD3 and/or CD5 and/or rC9.4 when discussing this issue. Weaker answers failed to highlight all three aspects of payment/inducement to the witness. Discussion of reimbursement of the train ticket proved troublesome. In order to achieve a grading of 'Satisfactory' or 'Good', careful analysis was required—while statements made in absolute terms that the barrister could pay the fare were to be graded poor, better-reasoned arguments (e, train fares could be reimbursed via different means) were capable of providing evidence that the candidates grasped the point regarding payments to witnesses.

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	
#	%	#	%	#	%	#	%
7	12%	9	15%	27	46%	16	27%

Broad syllabus areas covered: Duty to act in the client's best interests (CD2), and act with honesty and with integrity (CD3); duty under (CD7) to provide a competent standard of service including duty to avoid incurring unnecessary expenses (gC38.3). Breach of CD5 to cause clients to incur unnecessary expenditure when conducting litigation, particularly when the expenditure is counsel's fees. Duty not to discriminate unlawfully against any person (CD8), includes discrimination on the grounds of pregnancy or maternity (rC12). Putting forward a colleague for work who lacks experience (gC40). Duty to ignore personal gain from instructions in exercising professional judgment (CD4).

Key observations from Chief Examiner on cohort performance: A satisfactory response needed to include reference that the barrister must not discriminate in respect of L, pregnancy being a protected characteristic (CD8), and furthermore that barrister L was competent to take the role. The second barrister (R) did not have the relevant experience and any future advantage to the barrister was irrelevant. The responses to this sub-part were, on the whole, satisfactory with candidates addressing adequately the key aspects of the question, having identified the key points of discrimination and the need to advise that two counsel were not in the client's best interests. This was the last question of the paper and often details were lacking and responses short. Candidates occasionally missed the application of CD3 and did not make direct reference to CD4 applying to both aspects of the question. However, it was obvious from many answers that application was implicit in such answers, resulting in credit being given. Of the very few poorer responses there was a failure to identify the remediation steps the barrister needed to take.

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

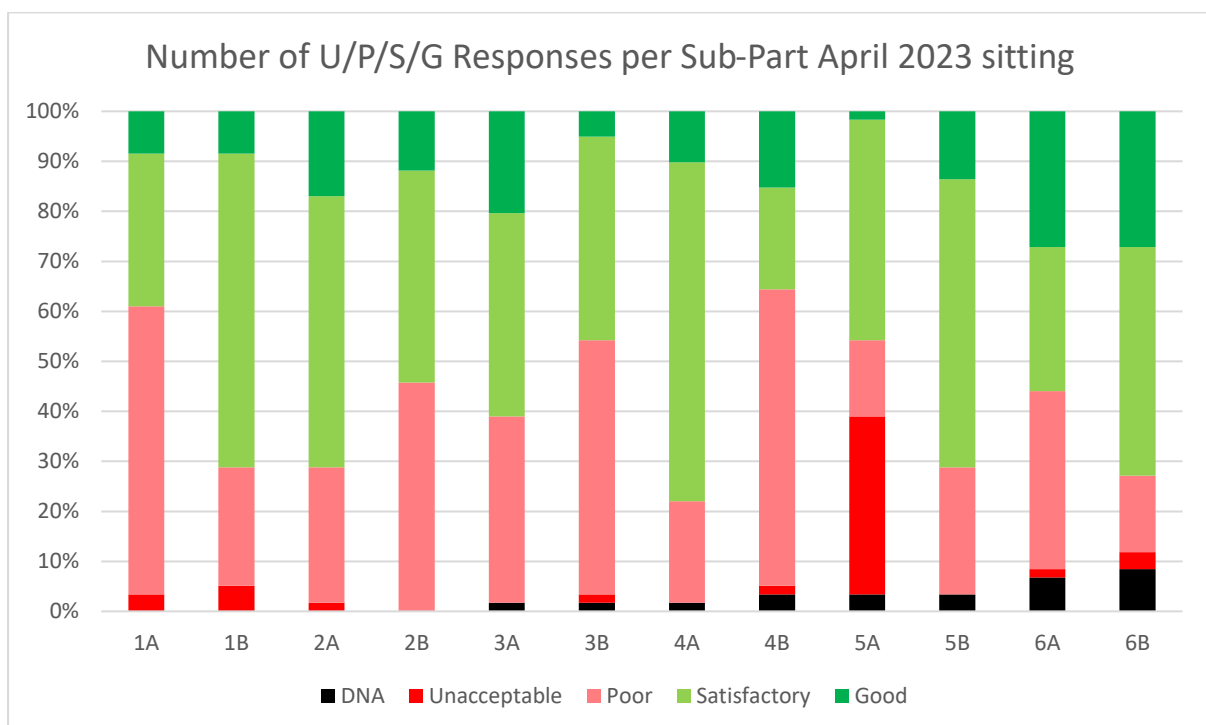
The Exam Board: (i) confirmed that no interventions were required in respect of any of the assessment items, or cohort results; (ii) that all sub-parts would be included in the assessment for the purposes of compiling candidate results; and (iii) noted that, with the move to a generic stem for each question (see 3.2, above), candidates should be reminded of the need to provide a resolution to the ethical issues for every question, as this was a frequent omission in candidate responses.

5.6.2 Taking the 12 item responses across 59 candidates produces 708 answers which were graded as follows:

Grading	% of all responses April 2023
Did Not Answer (DNA)	2.5%
Unacceptable	4.5%
Poor	34.5%
Satisfactory	44.6%
Good	13.8%

Across all 12 sub-parts the average competency rate (i.e., answers rated either 'Satisfactory' or 'Good') was 58.4%. The overall candidate passing rate for the April 2023 sitting as a whole at 71.2%, is higher than this figure, as candidates can be rated 'Competent' overall, without having to achieve a 'Good' or a "Satisfactory" grading in respect of every one of the 12 sub-parts.

5.6.3 Distribution of categorisations across question sub-parts April 2023 sitting



The graph above shows the distribution of answer categorisations across all 12 sub-parts of the assessment for the April 2023 sitting. As can be seen items 1A and 4B proved to be the most challenging. Looking at each sub-part on the basis that an answer rated either 'Satisfactory' or 'Good' falls within the 'Competent' grouping, results in 35.5% of responses to sub-part 4B were graded as 'Competent' and 39% for sub-part 1A. By contrast, sub-parts 4A had a competency rate 78%.

5.6.4 Assuming candidates attempted the questions in sequence, the data does not suggest a falling-off of candidate performance when comparing grades awarded for the first 4 sub-parts, compared to those awarded for the last 4 sub-parts. The competency rate (ie answers rated either 'Satisfactory' or 'Good') for sub-parts 1A to 2B was 59%, compared with 55% for sub-parts 3A to 4B, and 61% for sub-parts 5A to 6B. The word count for the April 2023 assessment paper was 4,059, compared to 4,798 for the January 2023 assessment paper. The board noted that some candidates were attempting to write down all their knowledge as opposed to being succinct, hence creating time pressures in completing the assessment. The Independent Observer noted that performance statistics showed that failing candidates were more likely to have not attempted the final two items and suggested that this should be monitored as it indicated that exam technique may impact a candidate's overall result. The CEB will continue to review the issue of word count and the cognitive load being placed on candidates in terms of the length and complexity of scenarios.

5.7 Trend data on candidate performance

5.7.1 Candidate journey

Candidate Journey April 2022 to April 2023 sittings					
	Apr-22	Jul-22	Oct-22	Jan-23	Apr-23
Candidates First Sitting	112	21	7	212	44
Candidates Resitting	0	4	2	1	15
Total Number of Candidates Sitting	112	25	9	213	59
First Sitting Candidates Passing	107	19	5	196	33
Resitting Candidates Passing	N/A	4	2	0	9
First Sitting Candidates Failing	5	2	2	16	11
Resitting Candidates Failing	N/A	0	0	1	6
Failing Candidates who had Accepted Extenuating Circumstances	1	0	1	0	1
Total Number of Candidates to Date	112	132	139	351	394
Total Number of Candidates Passing to Date	107	130	137	333	375
Candidates not yet deemed Competent	5	2	2	18	19

The table above shows that, across the 5 sittings to date, 394 unique candidates have attempted the exam. 375 of these candidates have been deemed competent either on their first sit or a resit - giving a cumulative passing rate of 95.2%. Of the 394 unique candidates, 360 passed on their first attempt, giving a cumulative first-sit pass rate of 91.4%. Of the 34 candidates who did not pass the exam on their first attempt, 15 have now passed on a later resit, giving a cumulative resit pass rate of 44.1%. All of the candidates who attempted the April 2022 or July 2022 exams have since passed. Of the 19 candidates yet to be deemed competent, one made their first attempt in October 2022; seven made their first attempt in January 2023; and 11 made their first attempt in April 2023. It cannot be assumed that all failing candidates will persevere to secure a pass, but some of these candidates may continue to enter as resitters in future sessions.

5.7.2 Cumulative data: total number of attempts and passes.

Sitting	Total Number of Candidates Sitting	Total Number of Candidates Passing at this Sitting	% of Candidates Passing at this Sitting
Apr-22	112	107	95.5%
Jul-22	25	23	92.0%
Oct-22	9	7	77.8%
Jan-23	213	196	92.0%
Apr-23	59	42	71.2%
Cumulative Total to Date	418	375	89.7%

The above table shows that, to date, there have been 418 attempts (resit and first sit) at the Professional Ethics Exam, of which 375 have resulted in gradings of 'Competent' – the overall percentage of attempts which were competent being 89.7%.

5.7.3 Cumulative data: distribution of answer gradings by sitting

Grading	April 2022 Sitting	July 2022 Sitting	October 2022 Sitting	January 2023 Sitting	April 2023 Sitting	Cumulative to date
% DNA	0.00%	0.67%	2.78%	1.02%	2.54%	0.98%
% Unacceptable	3.20%	4.33%	4.63%	1.02%	4.52%	2.37%
% Poor	12.87%	23.00%	26.85%	27.03%	34.46%	24.04%
% Satisfactory	48.21%	43.00%	49.07%	51.49%	44.63%	49.08%
% Good	35.71%	29.00%	16.67%	19.44%	13.84%	23.52%

The table above shows that the April 2022 cohort was arguably the strongest so far, achieving an average competency rate (ie answers rated either 'Satisfactory' or 'Good') of 84%, compared to 58.5% for the April 2023 cohort, arguably the weakest so far (with the highest percentage of answers graded 'poor' to date).

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 April 2023 Professional Ethics Assessment. The addition of measures including consideration of a more extensive sample of candidate responses or parts of responses during the standard setting process along with dip sampling during live marking has contributed to the quality of post-exam processes. The Chief Examiner noted that the wider variation in results for the April 2023 sitting might, in part, have been related to the change to the generic stem now used for each item.

5.9 Comments from the Psychometrician

The Psychometrician was happy to endorse the decisions taken by the board and felt that the outcomes were reassuring.

5.10 Comments from the Independent Observer

The Independent Observer confirmed to the Board that: (i) he had been present for both standard setting meetings, which he confirmed were thorough, and that he found that the generic stem (see 3.2, above) was carefully considered in discussions throughout, as was fairness to candidates; and (ii) that examination processes were robust and that it was commendable to see that the feedback from previous sits was taken on board and new ideas had been acted on quickly for improvement and incorporated well.

5.11 Comments from the Director General

The Director General was unavoidably not present to give comments at the conclusion of the Final Exam board, but provided later confirmation that he was satisfied with proceedings having reviewed the recording of the meeting.

6. COHORT AND CANDIDATE PERFORMANCE APRIL 2023 SITTING

Results for the April 2023 sitting of the pupillage stage Professional Ethics examination are as follows.

Total Number of Candidates	59
Number Passing	42
Passing Rate (%)	71.2%

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) 25% of candidates were deemed to be automatic passes, and a further 46% were deemed to have passed following a holistic review of their scripts.

	Apr-22	Jul-22	Oct-22	Jan-23	Apr-23	Total to date
Total number of candidates	112	25	9	213	59	418
Total number of candidates subject to holistic review	15.2%	40.0%	44.4%	41.3%	59.3%	36.8%
Automatic Fail	1.8%	4.0%	22.2%	5.2%	15.3%	6.0%
Fail at Holistic Review Stage	2.7%	4.0%	0.0%	2.8%	13.6%	4.3%
Pass at Holistic Review Stage	12.5%	36.0%	44.4%	38.5%	45.8%	32.5%
Automatic Pass	83.0%	56.0%	33.3%	53.5%	25.4%	57.2%

The above table reveals that the April 2023 sitting resulted in: (i) the highest percentage of candidates thus far being considered under the holistic review process (59.3%); (ii) the highest percentage of candidates subjected to holistic review being confirmed as 'Not Competent' following the review process (13.6%); (iii) the highest percentage of candidates subjected to holistic review being confirmed as passing as a result of the process; and (iv) the lowest percentage of candidates passing automatically (down to 25.4%).

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	1
6 Satisfactory/Good Responses	5
7 Satisfactory/Good Responses	8
8 Satisfactory/Good Responses	13
9 Satisfactory/Good Responses	6
10 Satisfactory/Good Responses	7
11 Satisfactory/Good Responses	2
12 Satisfactory/Good Responses	0

Number of Failing Candidates With	
3 Unacceptable/Poor Responses	0
4 Unacceptable/Poor Responses	0
5 Unacceptable/Poor Responses	2
6 Unacceptable/Poor Responses	1
7 Unacceptable/Poor Responses	7
8 Unacceptable/Poor Responses	3
9 Unacceptable/Poor Responses	0
10 Unacceptable/Poor Responses	3
11 Unacceptable/Poor Responses	0
12 Unacceptable/Poor Responses	1

6.1.3 The table below illustrates the operation of the grading and holistic review processes (outlined at 4.3.3 above) in respect of the April 2023 cohort.

Profiles April 2023 Sitting	Unacceptable	Poor	Satisfactory	Good
Strongest Profile - candidate automatically failing with 3 or more "Unsatisfactory" gradings	3	2	5	2
Strongest Profile - candidate automatically failing with 4 or fewer "Good" or "Satisfactory" gradings	0	8	3	1
Strongest profile - candidate failing following holistic review	0	6	6	0
Weakest profile - candidate passing following holistic review	1	5	6	0

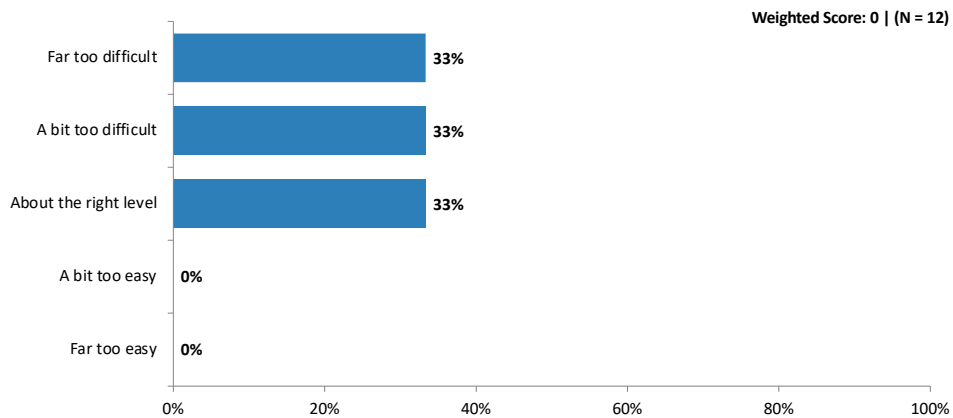
In respect of the candidates being considered in the holistic review process, it should be borne in mind that the determination of a "Competent" or "Not Competent" grading is not driven by a simple mathematical formula, but ultimately rests on the overall view of the quality of the script taken by the examiners. Hence, as the above table shows, the weakest candidate passing as a result of the holistic review process and the strongest candidate failing following holistic review both had six answers graded "satisfactory". The candidate passing on holistic review actually had one answer graded "unacceptable" whereas the candidate who failed had no "unacceptable" answers. A consideration for reviewers will be the nature and seriousness of the defect contained in an answer, for example whether an answer is graded "Unacceptable" on the grounds of what the candidate has failed to address, or on the basis of what the candidate has (wrongly) asserted to be the correct ethical position.

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. Responses were provided by 12 candidates (20%).

6.2.2 A summary of the general feedback: Level of difficulty

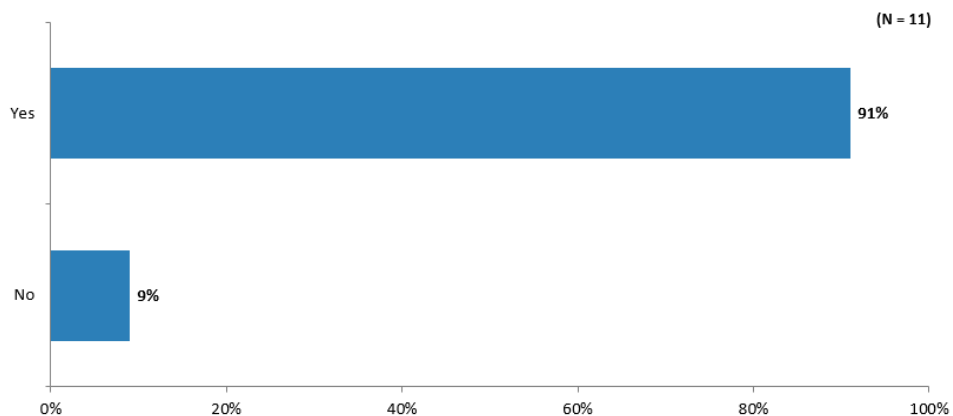
What was your impression of the overall difficulty level of the paper for a barrister at this level of training?



2

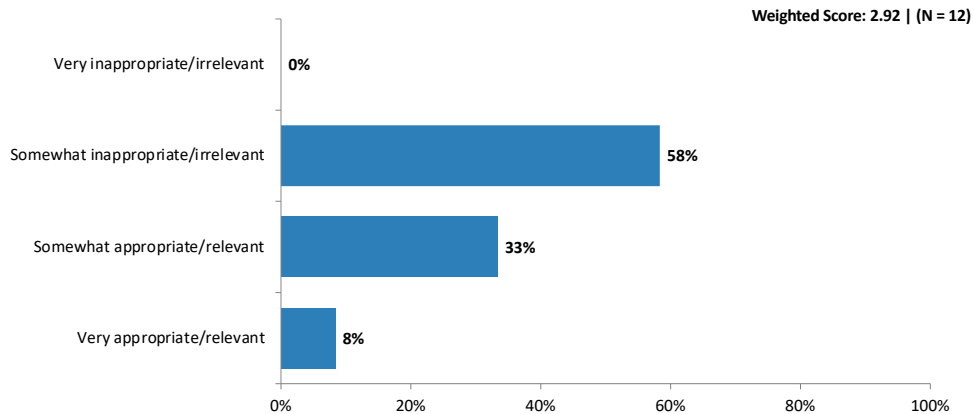
6.2.3 A summary of the general feedback: Sufficiency of time allowed

Did you leave any answers blank or incomplete due to insufficient time?



6.2.4 A summary of the general feedback: Relevance of scenarios

How appropriate and relevant did you find the scenarios were to the experience of early years practitioners?



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6.2.5 A summary of the general feedback: comments made by respondents.

There were many positive comments made by respondents, but amongst the concerns raised, the following themes emerged:

- the extent to which many candidates felt unable to fully answer the questions set in the time available.
- some scenarios seemed rather 'textbook' rather than reflecting the subtleties of real life.
- public access focus of some scenarios not appropriate for pupillage stage assessment.
- there were repeated themes, especially questions that engaged core duties 2 and 7.
- technical issues with accessing the Handbook online.

The CEB will take these points on board in advising the BSB on measures it considers necessary to facilitate the quality enhancement of the assessment.

Professor Mike Molan
Chair of the CEB
19 July 2023

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. 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>