

**BAR
STANDARDS
BOARD**

REGULATING BARRISTERS

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

**Pupillage stage Professional Ethics
April 2024 Sitting**

1. EXECUTIVE SUMMARY

The eighth sitting of the pupillage component Professional Ethics examination was held on Monday 22 April 2024 at 2pm. The summary of results is as follows:

Total Number of Candidates	115
Number Passing	100
Passing Rate (%)	87.0%

The April 2024 sitting saw 115 candidates attempting the assessment. The passing rate was in the middle of the range of passing rates recorded across the eight 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 2024 sitting and no interventions required in respect of any of the assessment questions. For more detail on candidate journey data see 5.7.1.

2. THE ASSESSMENT OF PROFESSIONAL ETHICS

2.1 Bar Training

In 2020, following on from the Future Bar Training reforms, the Bar Professional Training Course (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 Centralised Examinations Board (CEB) is not involved in the assessment of professional ethics in the Bar Training courses delivered by AETOs.

2.2 Professional Ethics assessment during pupillage

Students successfully completing the vocational component of Bar Training, Bar Transfer Test candidates (BTT) who were assessed after the BTT was aligned to the new vocational assessments, and BPTC graduates whose pupillages begin during or after May 2024 who are taken on as pupils are required to pass a Professional Ethics examination during the pupillage component. Pupils cannot 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 (BSB). 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>

Following a transition period, passing the Professional Ethics assessment during pupillage is now¹ a requirement for all pupils unless they have a specific exemption authorised by the BSB.

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 2024 sittings, was provided to candidates in October 2023, see: <https://www.barstandardsboard.org.uk/static/b6ade09d-d302-479d-97803aa988157072/BSB-Professional-Ethics-Pupillage-WBL-Assessment-Syllabus-23-24.pdf>

3.2 How is Professional Ethics assessed during the pupillage component?

The Professional Ethics assessment is an exam comprising 12 questions. All questions are equally weighted. Consecutive questions 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 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 is allocated to one of four categories:

¹ From the July 2024 Ethics assessment onwards

- 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 questions. 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 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 questions.

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 question 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 questions. 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.

4.2.4 For the first part of the standard setting process, standard setters are asked to identify (independently of each other), the content for each question they consider the notional 'minimally competent candidate' should be able to provide by way of a response for each question. 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 the paper confirmation process and are also provided with a sample of candidate answers for each question. 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 question are 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 question 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'). The Independent Observer attends the plenary standard setters' meeting and comments on the process where necessary.

4.2.5 For the April 2024 cohort, an additional quality assurance step was introduced. Following the standard setting meetings the Examining Team applied the final mark scheme to a further sample of three responses (that have not been seen by standard setters) to test the amended mark scheme before it was shared with markers. The change was found to be helpful in ensuring that markers understood how to apply to final mark scheme and in resolving any remaining issues during the marking stage.

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 questions.

- 4.3.2 Markers are allocated two specific questions to mark. 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 eight or more 'Satisfactory' or 'Good' and no more than two 'Unacceptable' answers ("automatic passes") are removed from further review processes. All such scripts are graded overall 'Competent'. Scripts with four or fewer 'Satisfactory' or 'Good' 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 answers graded 'Unacceptable' are reviewed again by a member of the Examining Team. Confirmation that a script contains three or more 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 answers graded 'Unacceptable' it will be allocated for holistic review.
- 4.3.5 Scripts containing between five and seven 'Satisfactory' or 'Good' answers (and no more than two 'Unacceptable' 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 seven 'Satisfactory' or 'Good' answers will meet the threshold for competence;
- (ii) and that those scripts containing five answers graded 'Satisfactory' or 'Good' will not.

Scripts with six answers graded 'Satisfactory' or 'Good' will be carefully scrutinised, using the same principles, reviewers being mindful that that this category contains scripts which are very much on the competence threshold. Each script is reviewed independently by two reviewers and an overall judgment is made on the quality of the script with a particular focus on the nature and gravity of the errors made by the candidate where answers have been graded 'Poor' and 'Unacceptable'. 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 Standards. 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 questions, 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 Examination 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 (ie 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 questions 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. Failing candidates can access the commentary on the operation of the assessment (5.6.1 below) in conjunction with the individualised feedback provided.

5. THE APRIL 2024 PROFESSIONAL ETHICS EXAMINATION RESULTS

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

The Examinations Manager confirmed that 117 candidates had registered to sit the April 2024 examination, of whom 115 sat and completed the exam. One candidate was absent due to personal circumstances. One candidate attempted to sit a remotely proctored exam but was unable to access the exam paper as neither of their laptops met the technical requirements. Both candidates applied for extenuating circumstances. Of the candidates who sat the exam, 94 (82%) sat Online Invigilated (OI) exams and 21 (18%) sat Test Centre (TC) Exams. TC candidates sat across 9 centres in 7 cities. One TC candidate sat a pen-and-paper exam as an agreed reasonable adjustment. Invigilator's Reports were received from each of the test centres, and two incidents were reported. One incident report related to a brief distracting noise outside the test centre. The other related to a 15-minute delay in

beginning the exam due to technical issues, which was resolved without candidates losing any exam time.

5.2 Report from the Examination Manager on the academic misconduct

A 'Red-Amber-Green' (RAG) Report was received from OI proctors detailing issues which arose during the exam and suspected exam violations. The RAG Report contained 4 'Red' flags and 3 'Amber' flags, which were reviewed by the SEOs, who also reviewed a random sample of 4 'Green' flags. Two of the 'Red' flags were stood down by the SEOs as not containing an exam violation. The other two were stood down by the Exams Manager under 3.3.1 of the Examination Misconduct Policy: *"There is evidence of an exam violation, but the evidence clearly indicates that the exam violation could not amount to examination misconduct and no further action is required."*

The BSB's Examination Misconduct Policy can be found here:

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

5.3 Report from the Examination Manager on Extenuating Circumstances

The Extenuating Circumstances Panel received three cases. Two were accepted on the basis of non-attendance arising from personal circumstances. The third related to the case of the candidate unable to begin the exam due to not having the appropriate technical set-up. The panel noted that this candidate had also attempted to contact the "BSB e-mail address" from the Exam Link E-mail. The panel asked that the non-attendance fee be waived on the basis that the candidate had made a reasonable attempt to attend the exam. By waiving this fee, the extenuating circumstance application was nullified, and so the panel did not consider the application further.

5.4 Report from the Chief Examiner on the standard setting process

5.4.1 Following the sitting, a sample of scripts was selected for the purposes of standard setting. Eight candidate responses were chosen per question. A team of standard setters comprising legal practitioners and academics was selected and provided with a briefing and written guidance on their tasks for the standard setting process. Team members 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 question.²

5.4.2 The Examining Team collated the material submitted by individual standard setters, which comprised commentary and suggestions regarding the content for each descriptor for each question. In addition, the Examining Team checked a wider selection of scripts, so that the available pool of 'observed'

² See Appendix 1

responses for each question 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 question was discussed and agreed by standard setters. Immediately following the meetings, the examining team applied the mark scheme to three further responses for each question and any issues arising from that task were raised and resolved with standard setters before the mark scheme was shared with markers.

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

- 5.5.1 The Chief Examiner confirmed the marking process had gone smoothly, with no issues of substance arising. A sample of candidates' answers was selected for discussion at the markers' meeting. Team Leaders were allocated two questions 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 questions for which they had specific responsibility. As regards marking, all markers had to sample mark eight responses for each of the two questions they were marking and submit the grades awarded and feedback provided for each response prior to the markers' meeting.
- 5.5.2 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 questions 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, where necessary, 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.
- 5.5.3 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. 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 moderation/calibration process were

submitted as final grades by either the member of the examining team or Team Leader responsible for the relevant question. First marking then took place.

5.5.4 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

5.6.1 The following is a summary of the distribution of candidate performance in respect of each question 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 1							
Unacceptable		Poor		Satisfactory		Good	
#	%	#	%	#	%	#	%
7	6%	5	4%	58	50%	45	39%

Broad syllabus areas covered: This question required candidates to demonstrate their understanding of the cab-rank rule, in relation to the observations made about the solicitor and the lay client. Candidates needed to recognise that this was not a situation in which the barrister could refuse to accept the instructions because the professional client posed a credit risk. The fact pattern did not give rise to any of the examples set out in the Code that amount to an unacceptable credit risk. Candidates also needed to recognise that the barrister could not refuse the case on the basis of the client's views or what the client is alleged to have done, where these conflict with the barrister's own beliefs.

Key observations from Chief Examiner on cohort performance: Overall, the majority of candidates addressed the key issues in this scenario demonstrating a satisfactory understanding and application of the cab rank rule. There were instances where candidates concluded that the barrister could refuse the instructions, either because their own views conflicted with the client's views, or that the solicitor represented an unacceptable credit risk. In those circumstances the candidates were graded unacceptable for this response. On the whole, however, this was a well answered question.

Decision of the exam board in relation to question: no intervention necessary; results for question confirmed and applied to candidates.

SAQ 2							
Unacceptable		Poor		Satisfactory		Good	
#	%	#	%	#	%	#	%
0	0%	11	10%	60	52%	44	38%

Broad syllabus areas covered: This question concerned a self-employed employment barrister who was instructed by a solicitor to prepare written advice to a lay client in relation to an employment dispute. A disagreement arose between the instructing solicitor and the barrister about the approach to the case, the barrister having reason to believe that the solicitor may not have had sight of all the relevant documentation in order to advise the client properly. This question required candidates to identify the barrister's core duties to act in the best interests of the lay client under CD2 and to provide a competent standard of work, under CD7. Candidates needed to identify that ultimately the primary duty here is to the lay client and that the barrister needed to maintain her independence from the pressure of the professional client, in accordance with her duty under CD4.

Key observations from Chief Examiner on cohort performance: Candidates responded to this question well, identifying the key issues and core duties in the case. Where candidates tended to fall into the poor category was generally because they failed to identify any remedial action to be taken by the barrister. The marking scheme was drafted broadly in this regard, so candidates could be credited for any sensible suggestion by way of remedial action. Accordingly poor candidates tended to have overlooked the need for the barrister to remedy or

respond to the issue, even if it were to simply explain to the solicitor that the advice they have given stands.

Decision of the exam board in relation to question: no intervention necessary; results for question confirmed and applied to candidates.

SAQ 3							
Unacceptable		Poor		Satisfactory		Good	
#	%	#	%	#	%	#	%
3	3%	10	9%	56	49%	46	40%

Broad syllabus areas covered: The barrister in this scenario was faced with three distinct ethical issues. The first issue related to a recent authority which was contrary to the arguments the barrister intended to argue; secondly, the court had failed to carry out all the procedural steps which could, with an adverse decision, potentially form grounds of appeal. Finally, the client's instructions as to how the barrister should conduct cross-examination so that it might unsettle and embarrass the claimant during his evidence. A satisfactory answer needed to highlight the primacy of CD1, which overrides the other core duties including CD2. The conclusion required for a satisfactory answer was that the barrister must make the court aware of the judgment (rC3.4); he should not omit to address the procedural error so that he could subsequently raise it on appeal; and he should not cross-examine only to embarrass or unsettle the claimant but could properly put some of the instructions provided. The resolution required was that the barrister needed to fully advise the client of the limits to CD2, and CD7. CD3 was also intrinsic to the reasoning since the barrister needed to act with integrity.

Key observations from Chief Examiner on cohort performance: On the whole, candidates answered this question well, identifying the correct and relevant issues. Most of the satisfactory points were identified by candidates save for the point that the barrister must act with honesty and integrity which was missed on occasions or that the barrister must disclose the adverse report, and such responses were graded poor. In the Good category the same enhanced points were discussed by a high number of candidates, in particular the relevance of CD5, that CD1 overrides CD2 and that the court should be provided with the relevant decisions, even if it is adverse to the client's interests. Many candidates raised the issue of wasting the court's time in the context of the procedural error rather than the cross-examination point, and some discussed the issue of the need to withdraw if the client were to insist that the barrister cross-examine in the manner suggested or that he withhold the authority from the court.

Decision of the exam board in relation to question: no intervention necessary; results for question confirmed and applied to candidates.

SAQ 4							
Unacceptable		Poor		Satisfactory		Good	
#	%	#	%	#	%	#	%
1	1%	8	7%	93	81%	13	11%

Broad syllabus areas covered: The question (which involved the same protagonist barrister as SAQ 3 followed on from the successful outcome of the trial and raised issues relating to the consequent media coverage, including reports that the client had now moved out of the jurisdiction in order to avoid any further publicity. Issues arose regarding the details of the successful case that could be included on the barrister's chambers website profile, and the disclosure of technical details of the previous case to a subsequent client (material from the previous case which was not raised before the court).

Key observations from Chief Examiner on cohort performance: This question appeared to be relatively straightforward but while there were a high number of satisfactory answers, it proved more difficult for candidates to achieve a good grade. All candidates highlighted CD6, but a small number were caught out by a failure to identify CD6 with respect to both the issue relating to advertising and the conduct of the conference. Most candidates did not identify the applicability of rC19 or the obligation not to mislead but as the fact pattern did not point to this being an issue, this rightly did not preclude the answer being marked as satisfactory. Those candidates who did achieve a grade of 'Good' often provided discussion on the same points contained within the mark scheme namely CD5, rC20 and an extended discussion about the clerk, as well as recognition of the fact the barrister could continue to observe his duty to the new client under CD2 while maintaining confidentiality to the previous client. The other points within the 'Good' descriptor were often missed.

Decision of the exam board in relation to question: no intervention necessary; results for question confirmed and applied to candidates.

SAQ 5							
Unacceptable		Poor		Satisfactory		Good	
#	%	#	%	#	%	#	%
2	2%	0	0%	53	46%	60	52%

Broad syllabus areas covered: This scenario tested the candidate's understanding of the ethical issues involved where a mandatory sentencing exercise arises. In particular, candidates were required to demonstrate that they understood and were able to correctly reconcile the overriding duty owed to the court under CD1 and the duty of confidentiality owed to the client under CD6. A satisfactory answer expected candidates to identify that as the client qualified for a mandatory sentence, the barrister could not remain silent regarding the client's undisclosed previous conviction since the same would result in the court failing to pass the sentence required by law. However, neither could the barrister disclose the previous conviction without the client's consent. As such, and in terms of resolution of the ethical issue, candidates needed to identify that the barrister would need to seek the client's consent to disclose the previous conviction, with the refusal to give such consent meaning that the barrister would have to withdraw from the case. In discussing the issues engaged, candidates were expected to note the fact

that the barrister's duty under CD1 overrides the duty to act in the client's best interests under CD2, and that the failure to disclose the previous conviction to the court would amount not only to a breach of CD1, but also a breach of CD3.

Key observations from Chief Examiner on cohort performance: This question was answered reasonably well overall, with the majority of candidates identifying the fact that the barrister could not continue to act in this scenario without the disclosure of the previous conviction. CD1, CD2 and CD6 were generally referred to and applied appropriately. Most candidates therefore also arrived at the correct resolution of the problem, namely that the barrister would need to withdraw if not given consent to disclose. The engagement of CD3 was missed by a number of candidates, but where the other key issues were dealt with correctly these candidates were still considered to be 'satisfactory' overall. A number of candidates sufficiently expanded their answers to be graded in the 'Good' category. These candidates developed the discussion to advise on the need to ensure that the client was fully advised as to the case against him and the position in relation to sentencing, the application of CD5, the fact that if the barrister withdrew she would be obliged to maintain the client's confidentiality, and the difference in the position where a mandatory sentence is not engaged. Better candidates again also identified the fact that the client should be advised that there was a high likelihood that his previous convictions would come to light in any event, the threat made by the client, and the application of CD4.

Candidates who fell into difficulty with this question tended to fail to unequivocally identify the need for the barrister to withdraw in the absence of consent (Poor), or in making a statement amounting to the fact that the barrister could divulge the existence of the previous conviction in absence of the client's consent (Unacceptable).

Decision of the exam board in relation to question: no intervention necessary; results for question confirmed and applied to candidates.

SAQ 6							
Unacceptable		Poor		Satisfactory		Good	
#	%	#	%	#	%	#	%
1	1%	51	44%	33	29%	30	26%

Broad syllabus areas covered: BSB social media usage rules for barristers. Candidates were presented with a scenario that gave rise to three separate but linked interactions on social media on the part of the barrister. The first interaction expected candidates to identify the engagement of CD4 and/ or CD5. Whilst candidates were not required to reach a firm conclusion as to whether the barrister's actions amounted to a breach of the same on the facts, the identification of the need to be mindful of these duties and why that was required. The second interaction involved a clear breach of CD3 and/or CD5 on the part of the barrister, and candidates were expected to identify the breach on one or both of these bases. Having identified the breach candidates were also required to deal with how the same could be mitigated by the barrister. The final interaction tested the candidate's ability to distinguish between conduct that does not give rise to

concern/ amount to a breach, this interaction being acceptable on the basis of the facts provided.

Key observations from Chief Examiner on cohort performance: This question presented a challenge to some candidates and there were a high number of 'Poor' outcomes as a result. In particular, there was a failure on the part of some candidates to approach the three interactions separately and address the same as distinct points. These candidates attempted rather to deal with the barrister's actions more generally, and in doing so often missed key points, such as making it clear that there was a breach of CD3 and/or CD5 in respect of the second interaction. The most common reason for a 'Poor' outcome however was the omission to discuss the need to mitigate the barrister's breach. What was required here was some reasonable discussion, eg an apology and/or deletion of the post and/or self-reporting etc. Some candidates took the view that it would be sufficient for the barrister to be reported to the BSB by a third party and others addressed how the barrister should moderate her behaviour in the future, but this was insufficient and did not address all elements of the question.

Despite the observations above, a good number of candidates answered this question to a 'Satisfactory' level, identifying the BSB guidance and the application of CD5. A number of candidates erred on the side of caution when discussing the third interaction, commenting that the same might amount to a breach of CD5 on the barrister's part.

A good few candidates expanded beyond the 'Satisfactory' content to be graded as 'Good'. Those that did so tended to focus on an expansion of their discussion of the application of CD3 in relation to the second interaction, and in their discussion of the need for the barrister to engage with chambers' complaints process.

Decision of the exam board in relation to question: no intervention necessary; results for question confirmed and applied to candidates.

SAQ 7							
Unacceptable		Poor		Satisfactory		Good	
#	%	#	%	#	%	#	%
59	51%	5	4%	39	34%	12	10%

Broad syllabus areas covered: Self-employed barrister instructed by a local authority in relation to defending a personal injury claim. Credible evidence of claimant concocting evidence of injuries. The barrister later realises that the claimant's medical report has been drafted by a doctor whom the barrister had previously successfully represented in criminal proceedings for fraud. Following the acquittal (based on the Crown offering no evidence), the doctor had privately admitted to the barrister that he had in fact written a fraudulent medical report.

Candidates were required to identify that this was an instance where the barrister could not act in the best interests of his current client, the local authority, without breaching the confidentiality of his former client, the claimant's expert witness. Candidates needed to identify that the barrister must therefore withdraw, and this was not an instance where he could obtain the informed consent of either party to continue to act for the local authority. Candidates also needed to demonstrate their

understanding of the need to ensure that the barrister complied with CD6 when withdrawing from the case.

Key observations from Chief Examiner on cohort performance: A significant number of candidates struggled with this question and either failed to identify the conflict of interest, or failed to identify that this was a situation where the barrister must withdraw, both of which resulted in the answer being graded 'Unacceptable.' Many candidates formed the view that if informed consent was given the barrister could continue to act. In adopting this approach, candidates had failed to consider the continuing duty owed by the barrister to the former client, and subsequently the conflicting duties between the current client and the former client. A small number of candidates formed the view that the barrister could breach the confidentiality of the former client in favour of the current client, which also resulted in an unacceptable answer.

Whilst the unacceptable response rate was high for this question, the fact pattern was such that it was clear to candidates that this was a scenario in which the barrister was duty bound to withdraw. Any answer that did not recognise this accordingly fell into the realms of a dangerous response.

Decision of the exam board in relation to question: no intervention necessary; results for question confirmed and applied to candidates.

SAQ 8							
Unacceptable		Poor		Satisfactory		Good	
#	%	#	%	#	%	#	%
8	7%	6	5%	36	31%	65	57%

Broad syllabus areas covered: This question involved a self-employed civil barrister looking to develop her practice and source more work. Her clerk advises her of a new scheme whereby members will be sent work subject to a £100 payment per case. He also recommends she joins a panel which has a £750 annual membership fee but does not guarantee any instructions. Candidates were required to identify the engagement of CD3 and CD4 in this scenario and recognise that the first scheme amounted to a referral fee and was prohibited under the Handbook, and that the second scheme was unlikely to amount to a referral fee and could be joined by the barrister. The mark scheme was drafted broadly in relation to the second scheme so that candidates need only discuss the relevant issues. Accordingly, candidates could still be deemed satisfactory if they concluded that the barrister should not join either scheme.

Key observations from Chief Examiner on cohort performance: On the whole, candidates performed well in this question, with the majority correctly identifying that the first scheme amounted to a referral fee and the second did not. A small number of candidates failed to recognise that the first scheme was a referral scheme and those candidates fell into the unacceptable category. Some candidates failed to address the second scheme at all and were graded poor.

Decision of the exam board in relation to question: no intervention necessary; results for question confirmed and applied to candidates.

SAQ 9							
Unacceptable		Poor		Satisfactory		Good	
#	%	#	%	#	%	#	%
21	18%	55	48%	28	24%	11	10%

Broad syllabus areas covered: This question concerned a barrister who, having closed the prosecution case in a one-day trial in the magistrates' court, decided to visit her niece in hospital over the lunchtime adjournment. She had no childcare responsibilities for her niece whose admission to hospital was no longer serious in nature. The barrister told the usher that she would return for the afternoon. She left her mobile phone in her car while she visited her niece. She did not return to court by 2pm and the court was unaware of her whereabouts. The defendant was acquitted. The barrister took her niece and her mother out for tea and sent a photo message at 3.30pm with text including the words, "A discharged niece and probably an acquitted crim. #whatdoesjusticematteranyway?" Candidates were required to identify the relevant ethical principles and discuss the ethical position of the barrister in this scenario including how they should be resolved.

Satisfactory candidates were required to identify the primary duty to the court, and that while it was acceptable for the barrister to leave court at lunchtime, she should have returned in good time to resume the afternoon session and was therefore in breach of CD1. She had breached CD2 and/or CD7 by leaving the CPS without representation during the trial. She had breached CD3 and/or CD5 by sending the text message to her clerk. As regards remediation the mark scheme provided for a number of acceptable suggestions relating to the need for the barrister to take all reasonable steps to mitigate her breaches which included apologising to the court and CPS, informing her Head of Chambers and ensuring that the CPS had details of chambers complaints process if she had already not done so when first instructed.

Key observations from Chief Examiner on cohort performance: Most candidates grasped the key issue presented in this question namely that the barrister had breached her duty to the court (CD1) and had failed to comply with CD2/CD7, while making sensible suggestions as to remediation. A small number of candidates elevated their answer into the 'Good' category, for example by providing further reasoning as to why this situation did not fall within rC25 or rC26 (provisions for returning instructions) and discussing the practicalities of remedying the situation. The main omission made (by a disappointingly high number of candidates) when answering this question was the failure to identify the applicability of CD1 to the fact pattern, resulting in answers being graded as unacceptable. A large number of candidates failed to address the steps required to mitigate or resolve the breaches while others failed to address the issues relating to the sending of the text namely the breach of CD3/CD5. Those candidates were graded as poor.

Decision of the exam board in relation to question: no intervention necessary; results for question confirmed and applied to candidates.

SAQ 10							
Unacceptable		Poor		Satisfactory		Good	
#	%	#	%	#	%	#	%
16	14%	24	21%	44	38%	31	27%

Broad syllabus areas covered: Use of an AI (artificial intelligence) tool in the preparation of a complex negligence claim involving case law from multiple jurisdictions. Suggested by instructing solicitor. Barrister input her client's personal details, including his name, date of birth and injuries into the search function. The AI tool generated several purportedly relevant cases which the barrister used in drafting the particulars of claim. Subsequently the barrister discovered that the cases cited by her in the particulars of claim which were generated by the AI tool either did not exist or did not support the points made in the statement of case, but the AI had simply used the client's personal dates to generate hypothetical cases. Candidates were required to identify the relevant ethical principles and discuss the ethical position of the barrister in this scenario including how the issues should be resolved.

Satisfactory responses were required to identify that in compliance with CD4 the barrister should not have been pressured by her instructing solicitor to use the AI tool and had failed to properly use her professional judgement by failing to research and understand the AI capabilities and the professional consequences of using it. She had failed to comply with CD2 and/or CD7 by using the cases generated by the AI tool without verifying their authenticity. In addition, by entering her client's personal details into the publicly accessed AI tool, she may have breached CD6, the duty of confidentiality to him. By way of resolution, the barrister needed to correct the mistakes made, drawing them to the attention of her instructing solicitor and client.

Key observations from Chief Examiner on cohort performance: The issues presented in this question appeared to be relatively straightforward. It was disappointing to see that some candidates appeared to struggle with this question. While it may not have helped that the question appeared towards the end of the paper, there were a relatively high number of unacceptable responses. While most candidates identified the applicability of CD2 and CD7 along with CD4 to the scenario, there were many candidates who failed to have regard to the engagement of CD6 as regards the barrister's actions of putting personal data into an open access database and were graded 'Unacceptable' given this failure. A number of candidates failed to discuss or provide any suggestions as to how the breaches could be mitigated and for that reason were graded 'Poor.' Better performing candidates provided well-reasoned discussion surrounding the sensible and ethical use of AI for research purposes. Others discussed remediation in detail, including consideration of whether the barrister's actions amounted to a data breach under the UK GDPR and, if so, what steps should be taken in those circumstances.

Decision of the exam board in relation to question: no intervention necessary; results for question confirmed and applied to candidates.

SAQ 11							
Unacceptable		Poor		Satisfactory		Good	
#	%	#	%	#	%	#	%
9	8%	26	23%	46	40%	34	30%

Broad syllabus areas covered: Two barrister scenario. One barrister had recently completed pupillage and wanted to start taking on public access cases. That barrister asked a colleague in chambers to be their qualified person for the purposes of supervision. However, the fact pattern revealed reasons as to why the colleague in chambers was not able to be a qualified person. Furthermore, the barrister seeking public access work had been given a case which involved a vulnerable client and some further complexities. The barrister was keen to represent the client and requested the support of their colleague. A satisfactory candidate needed to address issues for each barrister. They needed to identify the elements of qualification required by a barrister in order to enable them to undertake public access work. They also needed to identify that the other barrister did not meet a particular requirement to be a qualified person and that the first barrister would now need to find a suitable qualified person. A satisfactory candidate also needed to apply CD2 and/or CD7 to the scenario in identifying at least one of the considerations for the barrister regarding the case they had been asked to take such as the vulnerability of the client, whether they were sufficiently experienced and/or whether the client's best interests required the instruction of a solicitor.

Key observations from Chief Examiner on cohort performance: Most candidates were able to identify the requirements to be satisfied by barristers wanting to undertake public access work. Most candidates also successfully identified the application of CD2 and/or CD7 by identifying reasons why this may not be a suitable case for direct access, particularly for a barrister so soon out of pupillage. Unfortunately, some candidates did not address the issues for both barristers as required. A small number of weaker answers concluded that the second barrister was able to act as a qualified person.

Decision of the exam board in relation to question: no intervention necessary; results for question confirmed and applied to candidates.

SAQ 12							
Unacceptable		Poor		Satisfactory		Good	
#	%	#	%	#	%	#	%
5	4%	46	40%	48	42%	16	14%

Broad syllabus areas covered: Family law case, vulnerable client attending late on the day of a hearing and having childcare issues. The client was distressed and demonstrated some concerning behaviour towards her children, which was witnessed by the barrister. In the fact pattern, the client was concerned about having her children removed from her care and raised matters regarding information she did not want to be shared with the court. The scenario also included the client asking the barrister for advice about what to say in court. A

satisfactory response needed to identify that the client was vulnerable, and that the barrister should advise the client they were not able to proceed with the case that day due to the client's childcare issues and distress. A satisfactory candidate also had to identify that the barrister was unable to tell their client what to say in court/coach the client. Finally, a satisfactory answer needed to apply CD6 to the scenario and identify that there were certain matters which should not be revealed to the court without the client's consent, provided the duty not to mislead the court under CD1 was not breached.

Key observations from Chief Examiner on cohort performance: Most candidates successfully highlighted that a barrister cannot coach a witness/tell a client what to say. Most candidates identified that the hearing may not go ahead straight away, but not all candidates identified that the client was vulnerable. The candidates who did not achieve a satisfactory grade generally did not apply CD6 to the scenario and failed to address the specific part of the scenario where the client had asked about ensuring certain information was not disclosed. The better candidates were able to both apply CD6, and also go on to address the situation where the duty under CD6 may be overridden where permitted by law.

Decision of the exam board in relation to question: no intervention necessary; results for question confirmed and applied to candidates.

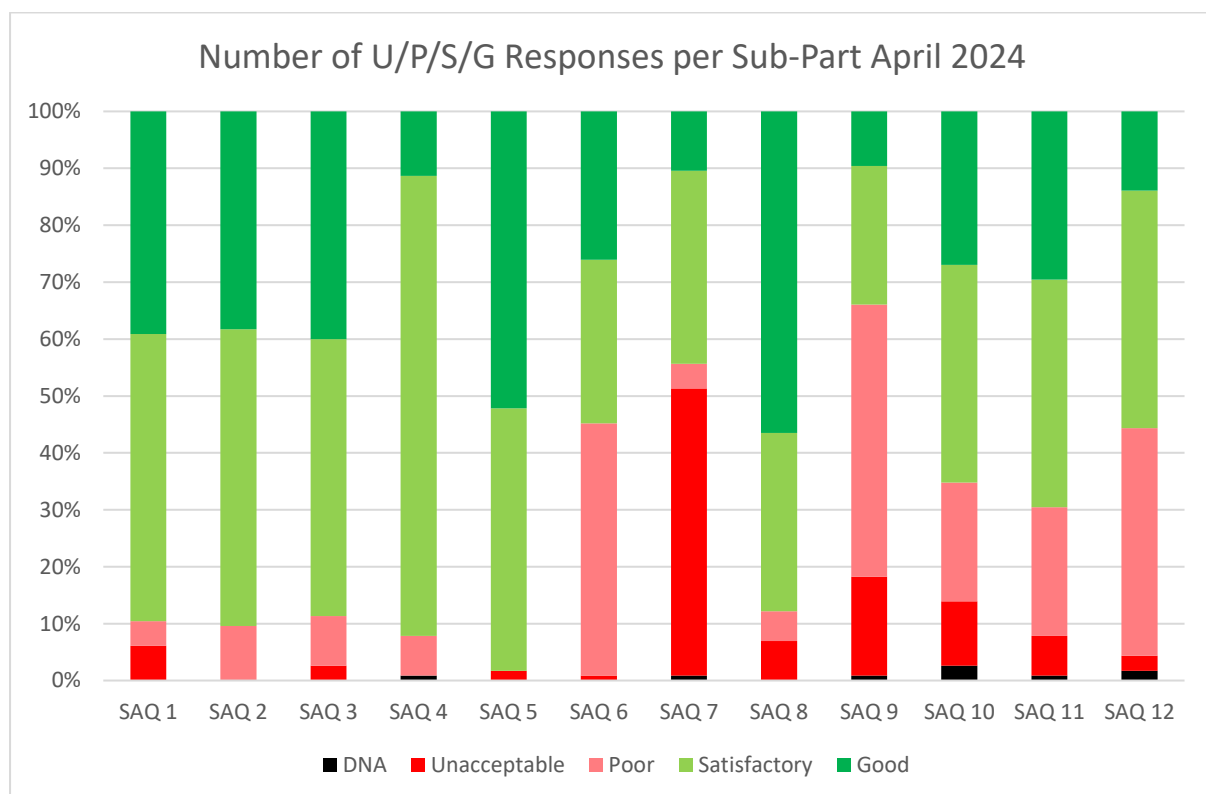
The Exam Board: (i) confirmed that no interventions were required in respect of any of the assessment questions, or cohort results; and (ii) that all questions would be included in the assessment for the purposes of compiling candidate results.

5.6.2 Taking the 12 question responses across 115 candidates produces 1380 answers which were graded as follows:

Grading	% of all responses April 2024
Did Not Answer (DNA)	0.65%
Unacceptable	8.91%
Poor	17.9%
Satisfactory	43.04%
Good	29.49%

Across all 12 questions the average competency rate (ie percentage of answers rated either 'Satisfactory' or 'Good') was 72.5%. The overall candidate passing rate for the April 2024 sitting is 87% which 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 questions.

5.6.3 Distribution of categorisations across questions April 2024 sitting



The graph above shows the distribution of answer categorisations across all 12 questions of the assessment for the April 2024 sitting. Questions 7 and 9 proved to be the most challenging. Looking at each question on the basis that an answer rated either 'Satisfactory' or 'Good' falls within the 'Competent' grouping, results in 44% of responses to question 7 were graded as

'Competent' and 34% for question 9. By contrast, question 5 had a competency rate of 98%.

5.6.4 Assuming candidates attempted the questions in sequence, the data does suggest a falling-off in candidate performance when comparing grades awarded for the first 4 questions, compared to those awarded for the last four questions. The competency rate (ie answers rated either 'Satisfactory' or 'Good') for questions 1 to 4 was 90%, compared with 72% for questions 5 to 8, and 58% for questions 9 to 12. Candidates were, however, still able to achieve average competency ratings (for the paper as a whole) in questions 9 and 11.

5.6.5 The word count for the April 2024 assessment paper was the second lowest across all eight sittings to date, a factor that also suggests that candidate fatigue and lack of time to complete the assessment may not have been significant factors.

Sitting	Word count
Apr-22	3708
Jul-22	4318
Oct-22	4796
Jan-23	4798
Apr-23	4059
Jul-23	3474
Jan-24	3672
Apr-24	3595
Average	4053

5.7 Trend data on candidate performance

5.7.1 Candidate journey

Candidate Journey								
	Apr-22	Jul-22	Oct-22	Jan-23	Apr-23	Jul-23	Jan-24	Apr-24
Candidates First Sitting	112	21	7	212	44	34	340	58
Candidates Resitting	0	4	2	1	15	17	4	57
Total Number of Candidates Sitting	112	25	9	213	59	51	344	115
First Sitting Candidates Passing	107	19	5	196	33	31	277	49
Resitting Candidates Passing	N/A	4	2	0	9	15	4	51
First Sitting Candidates Failing	5	2	2	16	11	3	63	9
Resitting Candidates Failing	N/A	0	0	1	6	2	0	6
Failing Candidates who had Accepted Extenuating Circumstances	1	0	1	0	1	0	1	0
Total Number of Candidates to Date	112	132	139	351	394	427	767	824
Total Number of Candidates Passing to Date	107	130	137	333	375	420	701	801
Candidates not yet deemed Competent	5	2	2	18	19	7	66	23

The table above shows that, across the eight sittings to date, there have been 828 first sit candidates, 717 passing on their first attempt – a first sit passing

rate of 85.6%. There have been 100 resit candidate attempts, with 85 passing, giving a cumulative resit passing rate of 85% (note that some candidates may have had more than one resit attempt; and some candidates may have been registered as 'first sitters' more than once due to earlier attempts being set aside).

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%
Jul-23	51	46	90.2%
Jan-24	344	281	81.7%
Apr-24	115	100	87.0%
Cumulative Total to Date	928	802	86.4%

In total there have been 928 individual candidate attempts at the Professional Ethics assessment (either first sit or resit) producing 802 'Competent' grades, a passing rate of 86.4% for all candidates across all sittings. Following the April 2024 sitting, there will be 23 candidates still in the system needing to achieve a 'Competent' grade in the July 2024 sitting.

5.7.3 Cumulative data: distribution of answer gradings by sitting

Grading	Apr-22	Jul-22	Oct-22
% DNA	0.00%	0.67%	2.78%
% Unacceptable	3.20%	4.33%	4.63%
% Poor	12.87%	23.00%	26.85%
% Satisfactory	48.21%	43.00%	49.07%
% Good	35.71%	29.00%	16.67%
Grading	Jan-23	Apr-23	Jul-23
% DNA	1.02%	2.54%	1.47%
% Unacceptable	1.02%	4.52%	0.98%
% Poor	27.03%	34.46%	19.28%
% Satisfactory	51.49%	44.63%	51.63%
% Good	19.44%	13.84%	26.63%
Grading	Jan-24	Apr-24	Cumulative
% DNA	0.65%	0.65%	0.84%
% Unacceptable	5.74%	8.91%	4.36%
% Poor	27.20%	17.93%	24.19%
% Satisfactory	45.78%	43.04%	47.25%
% Good	20.62%	29.49%	23.36%

The table above shows that the April 2022 cohort was arguably the strongest so far, achieving a 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). The April 2024 cohort outcome, achieving a 'competency' rating in 72.5% of responses, was slightly above the cumulative average of 70.6%, and 6% ahead of the January 2024 cohort.

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 2024 Professional Ethics Assessment.

5.9 Comments from the Independent Psychometrician

The Independent 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 he was entirely happy with the way the board had considered the operation of the assessments and the decisions made.

5.11 Comments from the Director General

On behalf of the Director General, the Interim Director of Standards confirmed that she was happy with the conduct of the Board and the conclusions which had been arrived at.

6. COHORT AND CANDIDATE PERFORMANCE APRIL 2024 SITTING

Results for the April 2024 sitting of the pupillage stage Professional Ethics examination are as follows.

Total Number of Candidates	115
Number Passing	100
Passing Rate (%)	87.0%

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) 74.8% of April 2024 candidates were deemed to be automatic passes, and a further 12.2% were deemed to have passed following a holistic review of their scripts.

Exam Sitting	Apr-22	Jul-22	Oct-22
Total number of candidates	112	25	9
Total number of candidates subject to holistic review	15.2%	40.0%	44.4%
Automatic Fail	1.8%	4.0%	22.2%
Fail at Holistic Review Stage	2.7%	4.0%	0.0%
Pass at Holistic Review Stage	12.5%	36.0%	44.4%
Automatic Pass	83.0%	56.0%	33.3%
Exam Sitting	Jan-23	Apr-23	Jul-23
Total number of candidates	213	59	51
Total number of candidates subject to holistic review	41.3%	59.3%	15.7%
Automatic Fail	5.2%	15.3%	3.9%
Fail at Holistic Review Stage	2.8%	13.6%	5.9%
Pass at Holistic Review Stage	38.5%	45.8%	9.8%
Automatic Pass	53.5%	25.4%	80.4%
Exam Sitting	Jan-24	Apr-24	Cumulative
Total number of candidates	344	115	928
Total number of candidates subject to holistic review	28.8%	15.7%	30.1%
Automatic Fail	8.7%	9.6%	7.3%
Fail at Holistic Review Stage	9.6%	3.5%	6.3%
Pass at Holistic Review Stage	19.2%	12.2%	23.8%
Automatic Pass	62.5%	74.8%	62.6%

The above table reveals that the April 2024 sitting resulted in: (i) a significantly lower than average number of candidates being considered under the holistic review process (15.7%); (ii) a lower-than-average percentage of candidates subjected to holistic review being confirmed as 'Competent' following the review process (12.2%); and (iii) an above average percentage of candidates passing automatically (74.8%). This data must read in the context of a change

to the holistic review policy introduced from the July 2023 sitting onwards. Previously, scripts were referred for holistic review if they contained between five and eight 'Satisfactory' or 'Good' and no more than two 'Unacceptable' answers. Scripts with nine or more 'Satisfactory' or 'Good' and no more than two 'Unacceptable' answers became 'automatic passes'. The holistic review policy has now been refined so that scripts are referred for holistic review if they contain between five and seven 'Satisfactory' or 'Good' and no more than two 'Unacceptable' answers. Scripts with eight or more 'Satisfactory' or 'Good' and no more than two 'Unacceptable' answers are now graded as 'automatic passes'.

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

Number of Passing Candidates With	
5 Satisfactory/Good Responses	0
6 Satisfactory/Good Responses	4
7 Satisfactory/Good Responses	10
8 Satisfactory/Good Responses	20
9 Satisfactory/Good Responses	24
10 Satisfactory/Good Responses	26
11 Satisfactory/Good Responses	10
12 Satisfactory/Good Responses	6

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

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 2024 cohort.

Profiles April 2024 Sitting	Unacceptable	Poor	Satisfactory	Good
Strongest Profile - candidate automatically failing with 3 or more "Unsatisfactory" gradings	3	0	6	3
Strongest Profile - candidate automatically failing with 4 or fewer "Good" or "Satisfactory" gradings	0	8	3	1
Strongest profile - candidate failing following holistic review	2	4	2	4
Weakest profile - candidate passing following holistic review	2	4	5	1

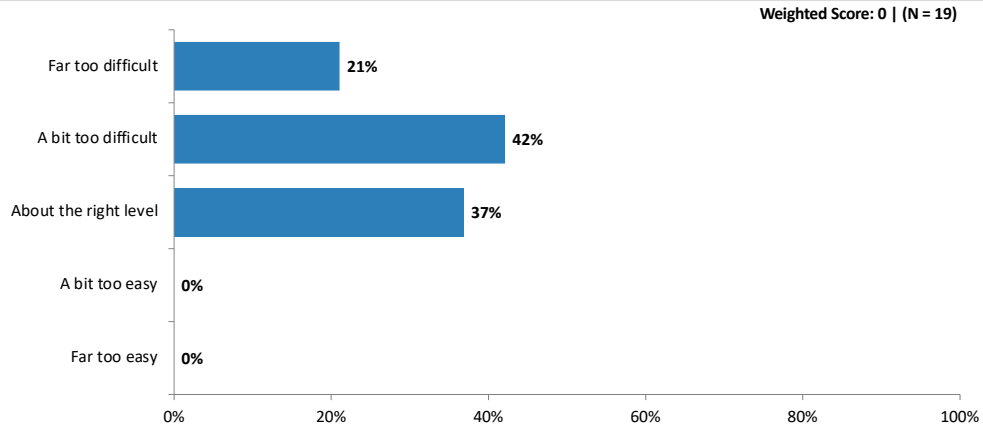
In respect of the candidates being considered in the holistic review process, it should be borne in mind that the determination of a "Competent" or "Not Competent" grading is not driven by a simple mathematical formula, but ultimately rests on the overall view of the quality of the script taken by the examiners. Hence, as the above table shows, the weakest candidate passing as a result of the holistic review process only had one answer graded as "Good" but had 5 answers graded as "Satisfactory". By contrast, the strongest candidate failing following holistic review had 4 answers graded as "Good", but only one answer graded as "Satisfactory". Both candidates had identical "Unacceptable/Poor" scores. 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 19 candidates (17%).

6.2.2 A summary of the general feedback: Level of difficulty

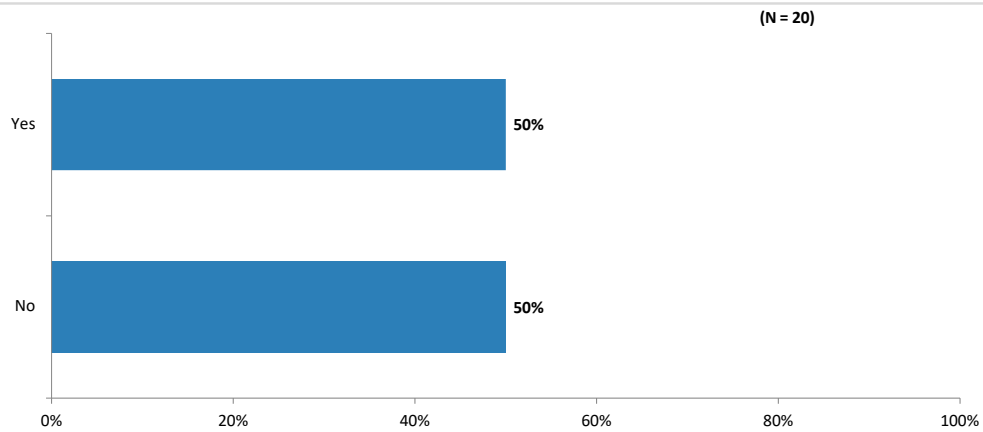
What was your impression of the overall difficulty level of the paper for a barrister at this level of training?



2

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

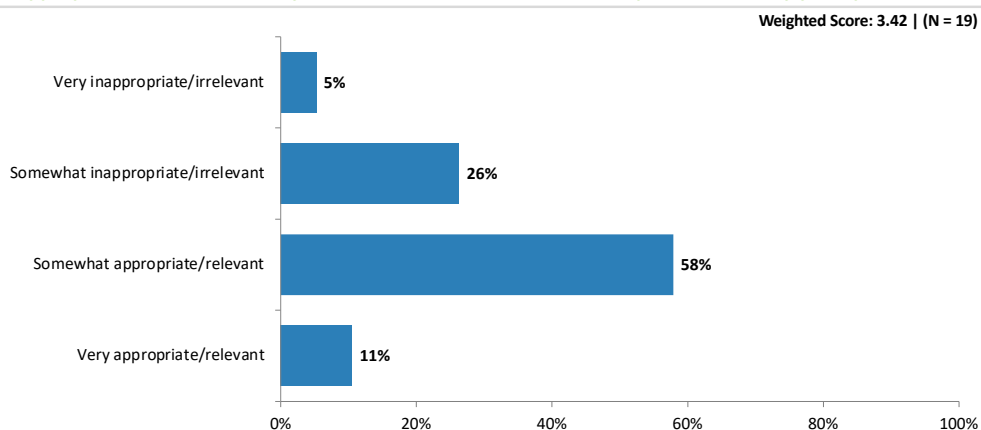
Did you leave any answers blank or incomplete due to insufficient time?



7

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?



8

sogolytics

© 2024

6.2.5 Candidate feedback trends

From the July 2022 sitting onwards the BSB has canvassed candidate feedback on the Professional Ethics assessment, focussing in particular on the level of difficulty posed by the questions, the extent to which candidates were unable to complete all items, and the relevance of the scenarios used to early years practitioners. Inevitably, response levels are quite low and the opportunity to give feedback is more likely to be taken up by those candidates who have more negative feelings regarding the assessment. The summary of responses to date is as follows:

Question	Apr-22	Jul-22	Oct-22	Jan-23	Apr-23	Jul-23	Jan-24	Apr-24
no. responding	N/A	3	3	73	12	12	88	19
% of candidates responding	N/A	8%	33%	34%	20%	24%	26%	17%
% of respondents confirming that the difficulty level of the paper as a whole was appropriate for a barrister at this level of training	N/A	66%	33%	19%	33%	50%	17%	37%
% of respondents self-reporting as leaving answers blank due to lack of time	N/A	0%	33%	55%	91%	25%	45%	50%
% of respondents confirming that the question scenarios were somewhat appropriate/relevant to the experience of early years practitioners	N/A	100%	33%	51%	33%	75%	51%	58%
Passing rate for this sit	95.50%	92%	77.80%	92%	71.20%	90.20%	81.70%	87.00%

Of the 210 responses to date, the cumulative breakdown is as follows:

% of respondents confirming that the difficulty level of the paper as a whole was appropriate for a barrister at this level of training	22.38%
% of respondents self-reporting as leaving answers blank due to lack of time	50.00%
% of respondents confirming that the question scenarios were somewhat appropriate/relevant to the experience of early years practitioners	49.05%

Generally, candidates who responded to the surveys appear to be happy regarding the relevance of the scenarios used but feel the assessment may be too challenging and that more time should be allowed for completion of the assessment.

Professor Mike Molan
Chair of the CEB
10 July 2024

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>