BAR STANDARDS BOARD

REGULATING BARRISTERS

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

**Pupillage stage Professional Ethics
July 2023 Sitting**

1. EXECUTIVE SUMMARY

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

Total Number of Candidates	51
Number Passing	46
Passing Rate (%)	90.2%

The July 2023 sitting saw 51 candidates attempting the assessment. The passing rate was the second highest recorded across the 6 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 July 2023 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. 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 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 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 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 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.

4.3 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 begin 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 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 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 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 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.

5. THE JULY 2023 WBL PROFESSIONAL ETHICS EXAMINATION RESULTS

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

The Examinations Manager confirmed that 52 candidates had registered to sit the July 2023 examination, of whom 51 sat and completed the exam – one candidate was absent. Of the candidates who sat the exam, 41 (80%) sat Online Invigilated (OI) exams, and 10 (20%) sat Test Centre (TC) exams. TC candidates sat across three centres. There were no requests for pen and paper examinations for the July 2023 sitting. No significant problems were encountered with the administration of the assessment and no repeat of the issues in relation to the online Handbook as had been the case with the April 2023 sitting.

5.2 Report from the Examination Manager on the academic misconduct

Invigilator's Reports were received from each of the test centres, and in accordance with the published Examination misconduct policy and procedure, the Examinations Manager summarised the details of incidents highlighted in the "Red/Amber/Green" ('RAG') report. There were two 'red flags' which were reviewed by the Senior Examinations Officers ('SEOs') along with a sample of five 'green flags.' One Red flag incident was de-escalated following a review by the SEOs, and the other was referred for action under the BSB's Examination Misconduct Policy, which can be found here:

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

The Misconduct Panel found that misconduct had taken place; the candidate appealed that decision; the Appeal Panel upheld the original finding.

5.3 Report from the Examination Manager on Extenuating Circumstances

The Examinations Manager confirmed that there had been one extenuating circumstances request which related to ill health at the time of the exam. The claim was accepted by the panel. No results from this sitting needed to be set aside as a result of extenuating circumstances.

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.[1]

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' 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.

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

---

[1] See Appendix 1

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.

5.5.3   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. 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.

5.5.4   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	
#	%	#	%	#	%	#	%
0	0%	6	12%	29	57%	16	31%

Broad syllabus areas covered: Understanding and application of the principles relevant to misconduct and serious misconduct, and duty to report misconduct and serious misconduct.

Key observations from Chief Examiner on cohort performance: This question was generally answered well. Most candidates correctly identified the sexual assault/serious misconduct point, and that both barristers were under a duty to report this conduct to the BSB. The majority also identified the words spoken as harassment and/or misconduct. A number of candidates failed to identify that the words spoken also amounted to discriminatory behaviour (CD8), or the need to report the misconduct to chambers' HOLP. Weaker candidates failed to deal specifically with the two different behaviours (the words spoken and the putting of the hand between the legs), and in doing so were apt therefore to miss the points relating to the words spoken entirely. Better candidates tended to identify the 'good' points relating to the need for the barrister to mitigate the effects of his serious misconduct by apologising (gC94), and the fact that the BSB would not take enforcement action against the victim, should she fail to comply with her duty to report, given that she was the victim of serious misconduct.

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	
#	%	#	%	#	%	#	%
1	2%	7	14%	17	33%	26	51%

Broad syllabus areas covered: Circumstances where instructions could be returned, considering whether the instructions could/should be accepted, and potential conflict of interest/risk of a conflict of interest when determining whether the instructions should be accepted. (rC26 and rC21).

Key observations from Chief Examiner on cohort performance: Overall, this question was dealt with reasonably well. Most candidates correctly identified and dealt with the issues arising in relation to the first and second set of instructions. Stronger candidates went on to expand upon their answers by referring to the practical steps that the barrister should take in relation to the jury summons, the absence of prejudice to the client given the timeframes involved, and the need to explain to the instructing solicitor the reason for returning the instructions. The best candidates were also able to engage in a more sophisticated discussion regarding the conflict of interest point, making reference to the lack of a personal interest, and the fact that the acquaintance would not need to be cross-examined by the barrister. The primary weakness amongst the candidates graded as poor was the failure to identify the conflict/risk of conflict issue, or to discuss the issue in a

manner that demonstrated an understanding of the application of the issue to the facts.

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**	
#	*%*	*#*	*%*	*#*	*%*	*#*	*%*
1	2%	1	2%	34	67%	15	29%

Broad syllabus areas covered: Barrister's comments to the Press; inducements to make comments to the Press (CD2, CD3 and CD5 engaged).

Key observations from Chief Examiner on cohort performance: The majority of answers were either satisfactory or good. Where a response was graded poor, this was attributable to the failure to recognise the relevance of CD2 to the context in that the barrister needed to bear in mind the client's best interests when considering whether to comment and, if so, what to say.

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**	
#	*%*	*#*	*%*	*#*	*%*	*#*	*%*
0	0%	12	24%	30	59%	9	18%

Broad syllabus areas covered: gifts from client – whether any could be accepted – need to respect confidentiality and remain impartial *(*CD3,CD4 CD2/CD7 and CD6 engaged).

Key observations from Chief Examiner on cohort performance: Candidates largely answered this question well; however, poor candidates failed to address either the engagement of CD2/CD7 or CD6 with regard to the invitation to lunch. 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 issue whether by referring to CD2/CD7 or CD6. Some good candidates highlighted a significant volume of material for that category including references to the chambers E&D policy relating to fair distribution of work (given that the barrister was in a position of influence as regards the relationship with his clerks) as well as the perception that the offer of a trip based on the successful outcome of the case might amount to a contingency fee.

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**	
#	*%*	*#*	*%*	*#*	*%*	*#*	*%*
0	0%	13	25%	33	65%	5	10%

Broad syllabus areas covered: Maintaining a proper standard of service to a client – punctuality – making pupil's status clear (CD2 and CD7 engaged)

Key observations from Chief Examiner on cohort performance: Overall, the majority of candidates addressed the key issues in this scenario. Only a small number of candidates crossed into the good category, with most poor candidates failing to properly consider the responsibilities of the supervisor, focusing more on the actions of the pupil. There were no unacceptable responses for this question.

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	2%	18	35%	29	57%	3	6%

Broad syllabus areas covered: Duty to withdraw if professionally embarrassed; accidental access to opponent's documents; duty to declare; duty to act in client's best interests.

Key observations from Chief Examiner on cohort performance: This question had a significant number of candidates who fell into the poor category. This was for a range of reasons but most notably because candidates either failed to recognise that the barrister must disclose to their opponent that they read the papers or failed to appreciate that the case was just about to begin (and therefore needed to recognise the duty to act in the best interests of the client in such circumstances). While markers noted that many candidates demonstrated an excellent knowledge of some of the key cases in this area, their ability to apply them effectively to the factual matrix was at times poor. There was one unacceptable response for this question which was based on a suggestion that the barrister actively use the information without informing the opponent.

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**	
#	*%*	*#*	*%*	*#*	*%*	*#*	*%*
0	0%	3	6%	23	45%	25	49%

*Broad syllabus areas covered: C*ab Rank Rule. Barrister not sharing client's views. Acceptable grounds for declining instructions

Key observations from Chief Examiner on cohort performance: Overall candidates performed very well in dealing with the ethical issues that arose within this scenario. All but one recognised and referred directly to the barrister being subject to the Cab Rank Rule, and that the political opinion of the client was insufficient reason to withhold or withdraw services. All but one concluded the barrister must not withhold services in this scenario, as per rC28.2. Some candidates identified the relevance of CD4 underpinning the rationale of the Cab Rank Rule when applied within a factual setting, and many included enhanced arguments as to why the barrister should not accept the instructions if he did not have sufficient time to properly prepare the case, given its complexity. The combination of these aspects resulted in a high proportion of the papers being graded as 'good' as opposed to 'satisfactory'.

The small number of candidates who did not deal fully with the position of the barrister and directly address the answer/explanation to be given to the client (that his personal views were irrelevant) but addressed it in a different way or only very briefly were given some credit as a result of the way they addressed the point.

The two poor candidates provided very limited arguments or incomplete answers. One identified that instructions can be refused if the barrister has insufficient time but stated there were no other reasons not to accept instructions, so in essence failed to deal with the Cab Rank Rule or rC28. The second response did not recognise that the barrister's views were irrelevant, instead stating this may lead to the barrister not being able to maintain his independence.

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**	
#	*%*	*#*	*%*	*#*	*%*	*#*	*%*
0	0%	3	6%	30	59%	18	35%

Broad syllabus areas covered: Barrister's duty to act with honesty and with integrity where his clerk had given an untrue version of events (CD3); to act in the best interests of his client (CD2) and provided a competent standard of work and service (CD7); duty to prepare adequately and be punctual; duty to ensure key aspects of the client's case are advanced appropriately (CD2 and CD7).

Key observations from Chief Examiner on cohort performance: Candidates generally provided answers that were satisfactory. The question required candidates to identify a number of different issues which perhaps did not link together easily. There were a number of common errors made when answering this question including a failure to address the lie told to the clerk by the barrister, in that this was a breach of CD3, and potentially serious misconduct. The issue of cross-examination on the drugs matter was not always recognised or addressed in detail. A holistic approach was applied by markers so that discussions which had reasoned conclusions and suggestions regarding remediation in respect of the cross-examination were credited. Some candidates were not applying the core duties to the facts but were listing them (contrary to the guidance given to candidates).

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**	
#	*%*	*#*	*%*	*#*	*%*	*#*	*%*
3	6%	24	47%	18	35%	6	12%

Broad syllabus areas covered: Barrister's duty to respect confidentiality of information concerning clients and complainants (CD1,3,5, & 6 engaged).

Key observations from Chief Examiner on cohort performance: Most candidates successfully identified that the barrister had a duty of confidentiality to his client under CD6. Poorer answers focused too much on the duties owed by the barrister to his own client and did not fully address the ethical issues raised by the fact the barrister had revealed information which could identify the complainant to the member of the public. This meant that those candidates either missed the breaches of CD3 and/or CD5 or they did not appreciate the significance of this part of the fact pattern, and therefore did not consider that it was either a breach of CD1 or criminal offence/contempt of court.

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	
#	%	#	%	#	%	#	%
2	4%	19	37%	7	14%	23	45%

Broad syllabus areas covered: ethical issues associated with the use of social media and contents of the BSB's Social Media Guidance (CDs 3,4,5 & 8 engaged).

Key observations from Chief Examiner on cohort performance: In the main, the question was answered very well, with a large proportion of candidates able to provide better than satisfactory answers by including more in-depth analysis of the fact pattern. This included the application of CD8 when making comments about women, the need for the barrister to maintain their independence as required by CD4 and more detailed application of the Social Media Guidance. The candidates who did not achieve a satisfactory grade failed to suggest a way of mitigating what the barrister had done.

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	
#	%	#	%	#	%	#	%
3	6%	6	12%	33	65%	9	18%

Broad syllabus areas covered: Duty to client raising concerns about adequacy of instructing solicitor's work; duty to set aside friendship with instructing solicitor when assessing appropriate response (CDs 3,4,5 & 7 engaged).

Key observations from Chief Examiner on cohort performance: Overall candidates performed well on this question, with only a small number receiving poor or unacceptable grades. Many candidates failed to articulate explicitly that the client was making an allegation against the solicitor of failing to prepare the case properly; however, markers were satisfied that candidates had understood this point in the manner that the question was answered overall. For those candidates who fell into the poor category, generally it was because they had failed to appreciate the practical step that needed to be taken by the barrister, i.e., asking for an adjournment as the case was being called back on before the barrister had had a chance to take further instructions.

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**	
#	*%*	*#*	*%*	*#*	*%*	*#*	*%*
4	8%	6	12%	33	65%	8	16%

Broad syllabus areas covered: Barrister's duty to keep accurate notes of time spent preparing for a case – duty to act with honesty and integrity (CDs 3, & 10 engaged).

Key observations from Chief Examiner on cohort performance: Overall candidates performed well on this question, despite it being the last in the paper. There were only a small number of candidates who did not attempt the question. There were two unacceptable responses which suggested that the barrister should retrospectively suggest a fixed fee to the client to make up for the fact that she had failed to keep a proper note. However, markers noted that the majority of candidates were able to grasp the key issues in this scenario without difficulty.

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 51 candidates produces 612 answers which were graded as follows:

Grading	% of all responses July 2023
Did Not Answer (DNA)	1.5%
Unacceptable	1.0%
Poor	19.3%
Satisfactory	51.6%
Good	26.6%

Across all 12 questions the average competency rate (i.e., answers rated either 'Satisfactory' or 'Good') was 78.3%. The overall candidate passing rate for the July 2023 sitting as a whole of 90.2% 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 questions.

5.6.3 Distribution of categorisations across question July 2023 sitting

Number of U/P/S/G Responses per Sub-Part July 2023 sitting
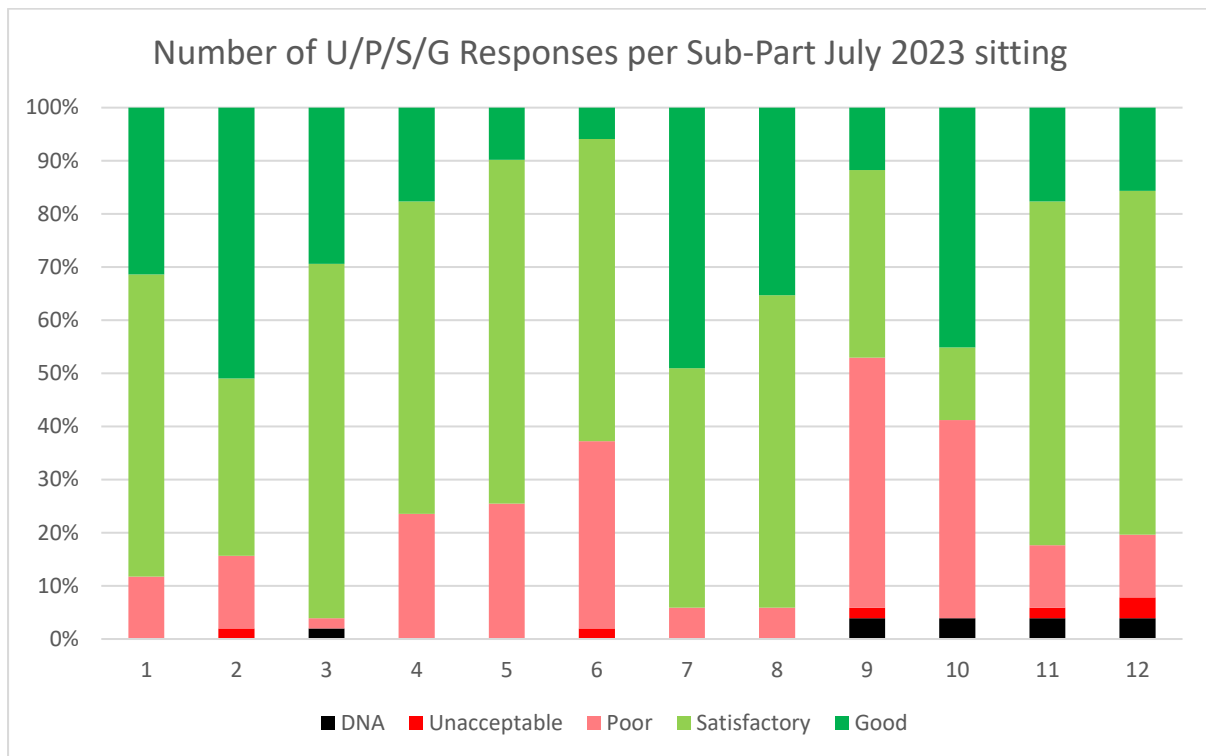
The graph above shows the distribution of answer categorisations across all 12 questions of the assessment for the July 2023 sitting. As can be seen questions 9 and 10 proved to be the most challenging. Looking at each question on the basis that an answer rated either 'Satisfactory' or 'Good' falls within the 'Competent' grouping, results in 47% of responses to question 9 graded as 'Competent' and 59% for question 10. By contrast, question 3 had a competency rate of 96%.

5.6.4 Assuming candidates attempted the questions in sequence, the data does suggest a falling-off of candidate performance when comparing grades awarded for the first 4 questions, compared to those awarded for the last 4 questions. The competency rate (i.e., answers rated either 'Satisfactory' or 'Good') for questions 1 to 4 was 86%, compared with 81% for questions 5 to 8, and 67% for questions 9 to 12. It should be noted, however, that this competency rate for the last four questions on the paper is impacted by questions 9 and 10 having the two lowest competency ratings of any questions in the assessment. Candidates were still able to achieve competency ratings of 82% and 80% for the last two questions, suggesting that the challenge posed by questions 9 and 10, rather than candidate fatigue or insufficient time to complete the assessment, was the dominant factor.

5.6.5 The word count for the July 2023 assessment paper was the lowest across all six 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
April 2022	3708
July 2022	4318
October 2022	4796
January 2023	4798
April 2023	4059
July 2023	3474
Average	4192

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
Candidates First Sitting	112	21	7	212	44	36
Candidates Resitting	0	4	2	1	15	15
Total Number of Candidates Sitting	112	25	9	213	59	51
First Sitting Candidates Passing	107	19	5	196	33	33
Resitting Candidates Passing	N/A	4	2	0	9	13
First Sitting Candidates Failing	5	2	2	16	11	3
Resitting Candidates Failing	N/A	0	0	1	6	2
Failing Candidates who had Accepted Extenuating Circumstances	1	0	1	0	1	0
Total Number of Candidates to Date	112	132	139	351	394	427
Total Number of Candidates Passing to Date	107	130	137	333	375	420
Candidates not yet deemed Competent	5	2	2	18	19	7

The table above shows that, across the 6 sittings to date, there have been 432 first sit candidates, 393 passing on their first attempt – a first sit passing rate of 91%. There have been 37 resit candidate attempts, with 28 passing, giving a cumulative resit pass rate of 76% (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). In total there have been 469 individual candidate attempts at the Professional Ethics assessment (either first sit or resit) producing 421 'Competent' grades, a passing rate of 89.8% for all candidates across all sittings. Following the July 2023 sitting, there will be 7 candidates still in the system needing to achieve a 'Competent' grade in the January 2024 sitting,

including one candidate on their 4th attempt, although 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	95.54%
Jul-22	25	23	92.00%
Oct-22	9	7	77.78%
Jan-23	213	196	92.02%
Apr-23	59	42	71.19%
Jul-23	51	46	90.20%
Cumulative Total to Date	469	421	89.77%

The above table shows that, to date, there have been 469 attempts (resit and first sit) at the Professional Ethics Exam, of which 425 have resulted in gradings of 'Competent' – the overall percentage of attempts which were competent being 89.8%.

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	July 2023 Sitting	Cumulative to date
% DNA	0.00%	0.67%	2.78%	1.02%	2.54%	1.47%	1.03%
% Unacceptable	3.20%	4.33%	4.63%	1.02%	4.52%	0.98%	2.22%
% Poor	12.87%	23.00%	26.85%	27.03%	34.46%	19.28%	23.53%
% Satisfactory	48.21%	43.00%	49.07%	51.49%	44.63%	51.63%	49.36%
% Good	35.71%	29.00%	16.67%	19.44%	13.84%	26.63%	23.86%

The table above shows that the April 2022 cohort was arguably the strongest so far, achieving an average competency rate (i.e., 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 July 2023 cohort returned the second highest competency rate to date at 78%.

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 July 2023 Professional Ethics Assessment.

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 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 arrived at.

6. COHORT AND CANDIDATE PERFORMANCE JULY 2023 SITTING

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

Total Number of Candidates	51
Number Passing	46
Passing Rate (%)	90.2%

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) 80% of candidates were deemed to be automatic passes, and a further 10% were deemed to have passed following a holistic review of their scripts.

	Apr-22	Jul-22	Oct-22	Jan-23	Apr-23	Jul-23	Total to date
Total Number of Candidates	112	25	9	213	59	51	469
Percent of Candidates Subject to Holistic Review	15%	40%	44%	41%	59%	16%	35%
Automatic Fail	2%	4%	22%	5%	15%	4%	6%
Fail at Holistic Review Stage	3%	4%	0%	3%	14%	6%	4%
Pass at Holistic Review Stage	13%	36%	44%	38%	46%	10%	30%
Automatic Pass	83%	56%	33%	54%	25%	80%	60%

The above table reveals that the July 2023 sitting resulted in: (i) the second lowest percentage of candidates thus far being considered under the holistic review process (16%); (ii) the lowest percentage of candidates subjected to holistic review being confirmed as 'Competent' following the review process (10%); and (iii) the second highest percentage of candidates passing automatically (80%). 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 up to eight or more '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 up to seven or more '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'. As a consequence, the July 2023 sitting saw the lowest percentage of candidates subjected to holistic review since the first sitting in April 2022.

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	1
7 Satisfactory/Good Responses	4
8 Satisfactory/Good Responses	4
9 Satisfactory/Good Responses	8
10 Satisfactory/Good Responses	9
11 Satisfactory/Good Responses	16
12 Satisfactory/Good Responses	4

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	0
8 Unacceptable/Poor Responses	1
9 Unacceptable/Poor Responses	1
10 Unacceptable/Poor Responses	0
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 July 2023 cohort.

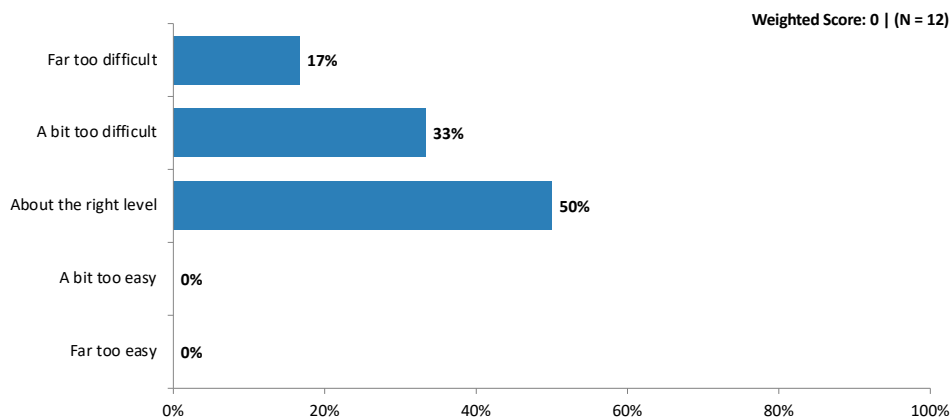| Profiles July 2023 Sitting	Unacceptable	Poor	Satisfactory	Good
Strongest Profile - candidate automatically failing with 3 or more "Unsatisfactory" gradings	4	4	3	1
Strongest Profile - candidate automatically failing with 4 or fewer "Good" or "Satisfactory" gradings	1	8	3	0
Strongest profile - candidate failing following holistic review	0	5	6	1
Weakest profile - candidate passing following holistic review	0	5	7	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 five answers graded "poor". The candidate failing on holistic review had one answer graded 'Good', whereas the candidate who passed had no answers which reached the 'Good' level. 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 (24%).
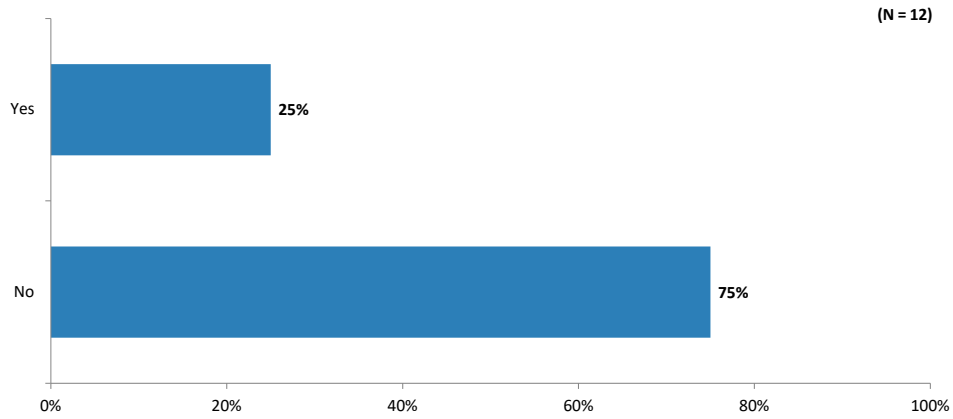
6.2.2   A summary of the general feedback: Level of difficulty

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

Weighted Score: 0 | (N = 12)

Category	Percentage
Far too difficult	17%
A bit too difficult	33%
About the right level	50%
A bit too easy	0%
Far too easy	0%

6.2.3   A summary of the general feedback: Sufficiency of time allowed
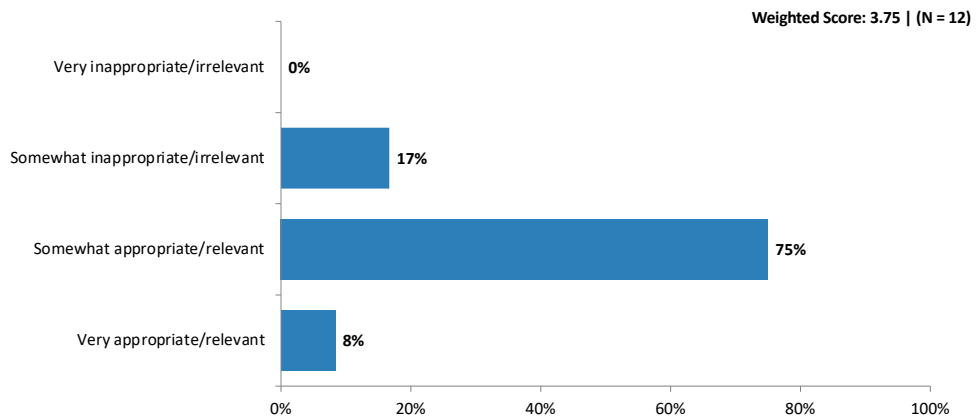
Did you leave any answers blank or incomplete due to insufficient time?

(N = 12)

6

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?

Weighted Score: 3.75 | (N = 12)

7

6.2.5   Summary of the general feedback: comments made by respondents in respect of the July 2023 sitting

Twelve candidates responded to the feedback survey. Respondents were more positive about the difficulty level and appropriateness of the scenarios than in previous sittings. 50% reported that the difficulty of the exam was at 'about the right level.' This is up from 33% in April 2023 and 19% in January 2023. 83% of respondents felt that the scenarios were either 'somewhat' or 'very' appropriate and relevant to early years practitioners. This is an increase from 41% in April 2023 and 57% in January 2023. There were several comments to the effect that there were too many issues to consider in each question and/or too many questions to work through in the time allowed. 91% of candidates reported using the ICCA preparatory materials and the BSB practice paper. 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
20 October 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	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. Analysis and/or evaluation is present but may not be highly developed Evidence of insight, but it may be limited. Use of appropriate information and principles drawn from syllabus materials. Shows an awareness of the key issues and comes to appropriate conclusions.
Poor = Not yet Competent	Poor understanding of the key issues with significant omissions and/or inaccuracies. Limited or completely lacking in evidence of understanding. Interpretation, analysis and/or evaluation is shallow and poorly substantiated. Little or no evidence of insight. Limited use of information and principles. Not evident that syllabus materials were understood and/or incorporated into answer. Shows a very limited awareness of the key issues and fails to come to appropriate conclusions.
Unacceptable = Not yet competent	The answer contains material which, in the view of the examiners, is so *clearly incorrect* 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. 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 do not know the answer to this question, but I would telephone my supervisor for assistance*") will fall into the "clearly incorrect" category of answers. 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.