

**BAR  
STANDARDS  
BOARD**

REGULATING BARRISTERS

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

**Pupillage stage Professional Ethics  
January 2024 Sitting**

## 1. EXECUTIVE SUMMARY

The seventh sitting of the pupillage component Professional Ethics examination was held on Thursday 4 January 2024 at 2pm. The summary of results is as follows:

Total Number of Candidates	344
Number Passing	281
Passing Rate (%)	81.7%

The January 2024 sitting saw 344 candidates attempting the assessment. The passing rate was the second lowest recorded across the seven 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 January 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 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 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 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>

For more information on who is required to sit this assessment, see here: <https://www.barstandardsboard.org.uk/static/4e0f0c38-490e-4923-841319491242c420/Ethics-for-all.pdf>

### **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 September 2023, see: [BSB-Professional-Ethics-Pupillage-WBL-Assessment-Syllabus-22-23.pdf](https://www.barstandardsboard.org.uk/BSB-Professional-Ethics-Pupillage-WBL-Assessment-Syllabus-22-23.pdf) ([barstandardsboard.org.uk](https://www.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 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 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.

## **5. THE JANUARY 2024 WBL PROFESSIONAL ETHICS EXAMINATION RESULTS**

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

The Examinations Manager confirmed that 345 candidates had registered to sit the January 2024 examination, of whom 344 sat and completed the exam – one candidate was absent. Of the candidates who sat the exam, 278 (81%) sat Online Invigilated (OI) exams, and 66 (19%) sat Test Centre (TC) exams. TC candidates sat across 13 centres in 9 cities. There were no requests for pen and paper examinations for the January 2024 sitting. No significant problems were encountered with the administration of the assessment, although it was reported to the Exam Board that three OI candidates' exam sessions froze part-way through the exam. No exam time was lost and none of their draft responses were lost; however, they were unable to progress with the exam until they contacted either Surpass or the BSB to make us aware of the problem. These three candidates were directed to our Extenuating Circumstances Policy.

### **5.2 Report from the Examination Manager on the academic misconduct**

The Examinations Manager confirmed that all of the processes outlined in the BSB's Examination Misconduct Policy were concluded before the Exam Board. No results from this sitting were voided by the Misconduct Panel. 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 Examinations Manager confirmed that there had been three extenuating circumstances requests. One case related to the three candidates noted above at 5.1, whose encountered minor technical difficulties. One case related to a single candidate with ill health at the time of the exam, and another to a single candidate who did not attend due to family bereavement. All three cases were accepted by the panel. As a result, one 'Not competent' result from this exam will be set aside.

### **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.<sup>1</sup>

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 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

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<sup>1</sup> See Appendix 1

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	2%	222	65%	116	34%
<p><i>Broad syllabus areas covered:</i> This scenario required candidates to identify and apply the relevant ethical principles for a barrister who was instructed on a public access basis to represent a criminal client in the magistrates' court. The barrister's standard of work may have been impacted by additional paid work he had taken on.</p>							
<p><i>Key observations from Chief Examiner on cohort performance:</i> A satisfactory candidate needed to identify that the barrister had a duty to act in the best interests of her client and to provide a competent standard of work and service (CD2 and CD7). Overall, candidates performed well on this question, often identifying points which went beyond what was required for a satisfactory grade. Most candidates successfully identified that the barrister may have breached CD2 and/or CD7, and dealt with the resolution to the matter in terms of ensuring the client had the information to enable her to make a complaint. Some candidates were able to offer ways in which the barrister could have dealt with matters on the day to avoid the issues arising. A small number of weaker answers concluded that the barrister should have returned her instructions on the trial rather than refused the additional class.</p>							
<p><i>Decision of the exam board in relation to question:</i> no intervention necessary; results for question confirmed and applied to candidates</p>							

SAQ 2							
Unacceptable		Poor		Satisfactory		Good	
#	%	#	%	#	%	#	%
6	2%	136	40%	106	31%	96	28%
<p><i>Broad syllabus areas covered:</i> This scenario tested candidates' understanding of a situation where a pupil barrister accesses material relating to the case of his pupil supervisor's opponent who is in the same chambers. A satisfactory response needed to identify that the pupil's deliberate actions were a breach of core duties (CD3 and CD5) and would potentially amount to serious misconduct.</p>							
<p><i>Key observations from Chief Examiner on cohort performance:</i> Most candidates identified that this was likely to be serious misconduct. However, some weaker candidates did not then deal with the need to report the matter to the BSB, and a few weaker candidates concluded that a pupil barrister could not be reported for serious misconduct due to their only being a pupil. There were also a few candidates who misread the fact pattern and concluded this was a scenario where inadvertent disclosure had occurred. The candidates who failed to achieve a satisfactory grade generally did not identify the key issues here and spent time focusing on a barrister's duty of confidentiality under CD6. This also often led to candidates failing to address the next steps for the barrister in the scenario such as informing the client or solicitor and making an injunction application.</p>							
<p><i>Decision of the exam board in relation to question:</i> no intervention necessary; results for question confirmed and applied to candidates</p>							

SAQ 3							
Unacceptable		Poor		Satisfactory		Good	
#	%	#	%	#	%	#	%
11	3%	33	10%	242	70%	58	17%

*Broad syllabus areas covered:* This question concerned an employed criminal defence barrister representing a defendant charged with possession with intent to supply class A drugs. Issues arising included not knowingly misleading the court by putting forward issues in mitigation known to be untrue; client consent to disclosure of previous convictions not before the court; and the duties of confidentiality surrounding these issues (CD1 and CD6).

*Key observations from Chief Examiner on cohort performance:* Overall, the majority of candidates addressed the key issues in this scenario. Given the comprehensive nature of a satisfactory answer to this question, there were only a limited number of good points that could be made by candidates. In terms of poor answers, some candidates failed to recognise or fully understand the disclosure/consent point, with some confused by the guidance under gC12, not fully appreciating that as this was a mandatory minimum sentence, the barrister could not continue to act if consent was not given to disclose. Accordingly, the unacceptable candidates had generally concluded that the barrister could continue to act.

*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	
#	%	#	%	#	%	#	%
28	8%	135	39%	151	44%	30	9%

*Broad syllabus areas covered:* Satisfactory candidates needed to identify that this was a scenario which engaged data protection laws and invoked CD6 and the risk of a data breach which might require reporting to the ICO.

*Key observations from Chief Examiner on cohort performance:* The main issue for candidates in this question arose in their failure to address the obligation placed upon the pupil in this scenario. Some candidates ignored him completely, focusing on the senior barrister or, more seriously, suggested he did not have a duty to act because he was a pupil. Candidates who came to the latter conclusion were graded as unacceptable. There were some candidates who failed to recognise that data protection principles applied or that a data breach had occurred and accordingly were marked poor. That being said, the remaining candidates were able to address the key obligations for both barristers and were graded satisfactory.

*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	
#	%	#	%	#	%	#	%
16	5%	41	12%	198	58%	89	26%
<p><i>Broad syllabus areas covered:</i> Unregistered Barrister's Guidance / holding out provisions / Legal Services Act 2007: (i) the scope of work an unregistered barrister could undertake; (ii) the risk/impression the words "qualified barrister and mediator" could give to clients; and (iii) representing a client in the magistrates' court exercising rights of audience and carrying out a reserved legal activity whilst potentially not permitted; breach of CD3, rS9.</p>							
<p><i>Key observations from Chief Examiner on cohort performance:</i> All candidates identified that the barrister was an unregistered barrister and correctly explained the holding out provisions. Almost all identified that mediation does not come within the definition of legal services, and the barrister was permitted to carry out such work, and to advertise his qualification. The majority correctly asserted that the barrister could volunteer at the legal centre, and as this involved the provision of legal services, care needed to be taken and advice given to avoid the possibility of holding out. Good candidates provided clear and reasoned arguments as to how to remediate or avoid the breach of CD3 and CD5 and discussed rC144 and the Legal Services Act.</p> <p>Unacceptable answers to this question all fell into the same category: this was in respect of advocacy in the magistrates' court and the provision of a reserved legal activity, rS8. Some incorrectly stated that no rights of audience were required for the magistrates' court, so there was no issue with the barrister representing the client in court. Others argued that he was permitted to exercise rights of audience by reference to his work at the legal advice centre, and others did not recognise rS8. Thus, despite many responses containing otherwise satisfactory content, this incorrect statement meant that those responses were graded Unacceptable.</p>							
<p><i>Decision of the exam board in relation to question:</i> no intervention necessary; results for question confirmed and applied to candidates</p>							

SAQ 6							
Unacceptable		Poor		Satisfactory		Good	
#	%	#	%	#	%	#	%
6	2%	55	16%	241	70%	42	12%
<p><i>Broad syllabus areas covered:</i> Compromise of independence - barrister's husband drafting an expert report for the opposing party in her case. Possibility that the barrister might have to cross-examine her husband if the case did not settle. CD4 was engaged along with CD1 and CD2.</p>							
<p><i>Key observations from Chief Examiner on cohort performance:</i> CD4 was engaged and identified by almost all candidates. Candidates generally enhanced their answers with reference to CD5, and the practical steps the barrister could or should take when faced with this potential conflict. Most argued that the lay client should be informed of the 'conflict', and better candidates identified the need to tell the opponent and the court. Overall, this was a well-answered question.</p> <p>Responses that were graded poor recognised the CD4 principles in this scenario but did not always explicitly state that this was because of the proximity of the relationship. Most identified the possibility of cross-examination but did not explore the implications for the court and/or the client. Those poor responses were often instances where the dynamic of CD4 and CD2 were not treated equally by the candidates in their reasoning. Some did not state the client should be told of the conflict or the steps the barrister should take to clarify or explain to the lay and professional clients if they continued with the case. There were also a small number of papers where the core duties were simply listed or mentioned but not applied, eg a single line answer was provided without full consideration of the issues in the question or provision of a response as to the next steps the barrister should take. Difficulty arose for some who misinterpreted the fact pattern, and considered the expert to be the client, or confused the roles.</p>							
<p><i>Decision of the exam board in relation to question:</i> no intervention necessary; results for question confirmed and applied to candidates</p>							

SAQ 7							
Unacceptable		Poor		Satisfactory		Good	
#	%	#	%	#	%	#	%
29	8%	83	24%	167	49%	65	19%

*Broad syllabus areas covered:* Barrister faced a clash of listings. Satisfactory candidates needed to highlight CD2 and CD7, discuss the clash of listings guidance and also address the clerk's conduct which required consideration of CD4. Key to a satisfactory response was the conclusion that there were no circumstances within the fact pattern which required or permitted the barrister to return the existing commitment in his diary and he should therefore return the new instructions.

*Key observations from Chief Examiner on cohort performance:* Most candidates were able to identify and apply CD2 and CD7 and conclude that the barrister should retain the existing instructions, as well as address the clerk's conduct appropriately. A smaller group of better candidates were able to highlight that the barrister could not possibly take on both cases given the fact pattern, that there was a need to inform the second firm of solicitors as soon as possible that he could not undertake the case, as well as other matters relating to the clerk's conduct. Poorer responses failed to assert that the barrister should undertake the existing diary commitment and/or failed to recognise the engagement of CD4 with regard to how the barrister should address the position concerning the clerk. Unacceptable answers generally arose because candidates asserted that the barrister should not undertake the existing diary commitment and opt instead to cover the new case while other examples of unacceptable responses stated that the barrister should take on the new case and return the existing case to a pupil. Other answers graded unacceptable asserted that the barrister should attempt to do both cases, which was clearly inappropriate, given the particular facts of the scenario.

A further incorrect statement that emerged from this question was a suggestion that the double fee negotiated for the new case was a prohibited referral fee under rC10. While this was not featured in the mark scheme and therefore had no bearing on the marks awarded, it was a common error from a number of candidates.

*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	
#	%	#	%	#	%	#	%
30	9%	201	58%	71	21%	42	12%
<p><i>Broad syllabus areas covered:</i> Barrister’s responsibilities towards a vulnerable client. Compliance with CD2 and CD7 – obligation to take steps to contact the client and try to get him to attend court, as well as protect the client’s position at court. Candidates also had to identify that the barrister must not mislead the court when dealing with the client’s absence (CD1) while at the same time maintaining client confidentiality (CD6) in the context of what was said by the client the previous day about not coming to court and the possible results of the hearing.</p>							
<p><i>Key observations from Chief Examiner on cohort performance:</i> Candidates appeared to find this question difficult. Most were able to identify and apply CD2 and CD7, the client’s vulnerability and the application of CD1. However, a large proportion of poor responses failed to recognise the engagement of CD6 in relation to the remarks made by the client in the conference the previous day, or failed to recognise the engagement of CD1 when addressing the client’s absence in court. Some candidates failed to demonstrate that the client had indicators of vulnerability and a few failed to identify that the barrister needed to take steps in order to comply with CD2 and/or CD7. Responses graded unacceptable largely arose from content which asserted that the barrister should disclose to the judge the reason that the client had not attended or the context of the conversation from the previous day which was a clear breach of CD6. There were also some answers which incorrectly stated that the barrister must withdraw.</p> <p>Of the relatively small number of responses which attracted a “Good” grade, the content elaborated on the application of CD2 and CD7, as well as discussing the circumstances in which the duty under CD6 is overridden and disclosure of confidential information is permitted by law (rC15.5). In addition, discussion surrounding consideration of withdrawal and the guidance to rC26 was presented in a thoughtful manner by the better candidates.</p>							
<p><i>Decision of the exam board in relation to question:</i> no intervention necessary; results for question confirmed and applied to candidates</p>							

SAQ 9							
Unacceptable		Poor		Satisfactory		Good	
#	%	#	%	#	%	#	%
13	4%	109	32%	120	35%	102	30%

*Broad syllabus areas covered:* This question concerned a client who had originally prepared and lodged his own statements of case. He then instructed a barrister for trial and the two met at court on the morning of trial. The barrister was concerned that the client had pleaded fraud without there being sufficient evidence to support the allegation. Satisfactory candidates were required to identify the overriding duty to the court, and the fact that the barrister could not advance a case of fraud where there was insufficient evidence to do so. Candidates needed to recognise that the barrister had to advise the client of this and seek his consent to withdraw the allegation of fraud. Only in these circumstances was the barrister able to continue to represent the client.

*Key observations from Chief Examiner on cohort performance:* Most candidates grasped the key issue presented in this question namely that the client could not advance the case of fraud. There were a range of ways in which candidates could elevate their answer into the good category, for example by providing further detail about the practicalities of remedying the situation with the court etc; however, the focus of the satisfactory answer was on recognising the need to cease to act if consent to withdraw the allegation was not provided. There were instances where candidates failed to identify the applicability of CD1 to the fact pattern and therefore fell into the poor category. Some candidates also erroneously stated because it was the day of the trial, the barrister should proceed with the case as it had been pleaded. Those candidates were graded as unacceptable.

*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	
#	%	#	%	#	%	#	%
70	20%	107	31%	107	31%	60	17%

*Broad syllabus areas covered:* Barrister's ability to maintain her independence: whether the manner in which the evidence was obtained was likely to be an issue in court which would require the barrister to be called to give evidence. A second set of instructions gave rise to the issue of whether or not the barrister could accept the instructions on a public access basis if she felt that it was in the client's best interests.

*Key observations from Chief Examiner on cohort performance:* Candidates needed to be alive to the significant consequences to the trial process of what appeared to be simple requests made by instructing solicitors. It was disappointing to see that many candidates appeared to struggle with this question. There were a high number of unacceptable responses. Many candidates failed to have regard to the duty of independence in respect of what was being asked of the barrister, with a significant number of candidates choosing to treat the ethical principles which applied to taking the statement differently from those applicable to taking the photos. Accordingly, those that did, concluded that there was no issue with the barrister taking the statement without any regard to risk to the barrister's independence as trial counsel. Candidates were also graded unacceptable where they simply failed to engage with the substance of the question, focusing solely on the second set of instructions, which was entirely peripheral to the main issue, or by focusing on irrelevant considerations like conducting litigation, which was not a live matter on the facts presented.

*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	3%	102	30%	123	36%	110	32%

*Broad syllabus areas covered:* The permissible bases upon which barristers may charge clients, and the circumstances in which a barrister may, or may not, cease to act and return their instructions. In particular, candidates were required to identify and apply the provision relating to non-payment of fees. The scenario also engaged the provisions relating to record keeping and the requirement not to discriminate.

*Key observations from Chief Examiner on cohort performance:* This question was answered reasonably well overall. In particular, candidates tended to engage well in a discussion of the key rule with regard to withdrawal based on non-payment of fees and made some attempt to apply the rule to the facts in the scenario. Most candidates also correctly identified that the barrister could not withdraw simply because she did not agree with the client's views. Better candidates were able to develop their discussion of whether the barrister should cease to act on the basis of the non-payment to include reference to the need to consider the client's best interests when doing so, and what that might mean on an application to the facts in this case. Better candidates were also able to deal practically with the steps that the barrister should take regarding the request by the client for an itemised account of the work undertaken, drawing upon the applicable rules and guidance to reach reasoned conclusions. Very few of even the better candidates made the explicit statement that staged payments were permissible; this simply did not appear to be identified by candidates as an ethical 'issue' that required addressing.

Where candidates fell into the 'poor' category this tended to be due to a failure to deal with the issue involving the client's dispute over the final invoice at all. This point was overlooked by a number of candidates, despite being clearly set up in the fact pattern. Some poorer candidates also failed to address the requirement not to discriminate.

There were a handful of candidates graded as unacceptable. The main reason for this was that the candidate concluded that the barrister could refuse, without justification, to provide the client with further clarification regarding the invoice.

*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	
#	%	#	%	#	%	#	%
46	13%	115	33%	142	41%	41	12%
<p><i>Broad syllabus areas covered:</i> The rule prohibiting the payment and receipt of referral fees (rC10) and the potential conflict with: (CD2) acting in the client's best interests) and; (CD4) the issue of independence or the perception of independence. A satisfactory answer expected candidates to engage in reasoned discussion as to whether any referral fee arose on the facts, and to identify the core duties engaged in the question of prohibited referral fees. Duty to disclose to the client a familial connection to ensure there was no breach of CD3 and/or CD5.</p>							
<p><i>Key observations from Chief Examiner on cohort performance:</i> This question gave rise to a high number of unacceptable responses. Those graded as unacceptable tended to be so due to a failure to make any reference at all to the need for the barrister to disclose to the client his relationship with/connection to the solicitor/firm to which the recommendation was being made. A smaller number of the unacceptable responses were due to the candidate simply failing to engage with the ethical issues raised in the question (ie those candidates whose responses were extremely limited, but who had written something, so did not fall into the 'DNA' category). Despite the number of unacceptable responses, some candidates dealt with this question well. Satisfactory candidates tended to be able to engage in some reasoned discussion as to the issue of referral fees, and the core duties engaged. Discussion of the reason for the recommendation, and in particular of the client's best interests, was often well-developed. The independence point was also identified and dealt with appropriately. Better candidates were able to expand further on the best interests point to arrive at the conclusion that the sister was an appropriate person to recommend in this instance. These candidates also often engaged in discussion as to whether the barrister might be regarded as having a 'material commercial interest' in the sister's firm.</p> <p>Where candidates fell into the 'poor' category it tended to be due to a failure to identify or apply the core duties engaged in the making or receiving of a payment/reward in exchange for a referral, and a failure to either identify or apply CD4 specifically. Core duties were sometimes referred to in the opening sentence of a response, but with no actual application to the facts.</p>							
<p><i>Decision of the exam board in relation to question:</i> no intervention necessary; results for question confirmed and applied to candidates</p>							

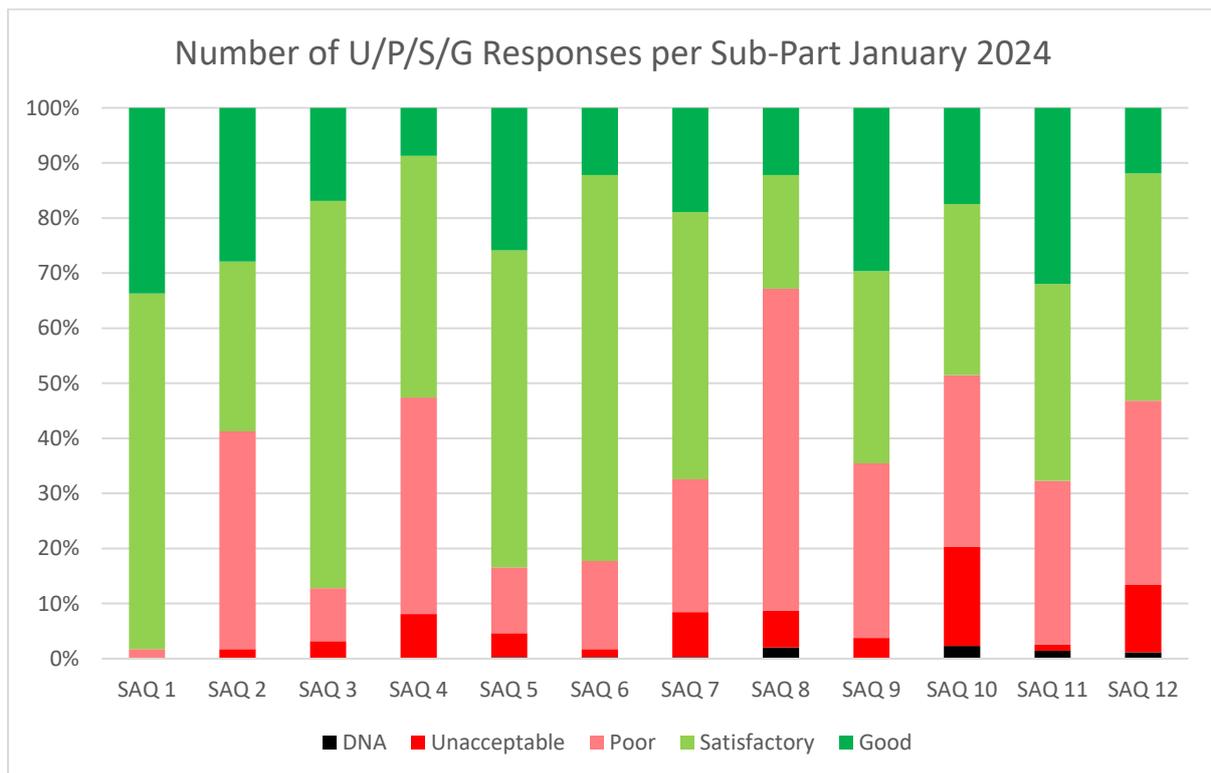
The Exam Board: (i) confirmed that no interventions were required in respect of any of the assessment questions, or cohort results; and (ii) that all questions would be included in the assessment for the purposes of compiling candidate results.

5.6.2 Taking the 12 question responses across 344 candidates produces 4,128 answers which were graded as follows:

Grading	% of all responses January 2024
Did Not Answer (DNA)	0.65%
Unacceptable	5.74%
Poor	27.20%
Satisfactory	45.78%
Good	20.62%

Across all 12 questions the average competency rate (ie answers rated either 'Satisfactory' or 'Good') was 66.4%. The overall candidate passing rate for the January 2024 sitting is 81.7% 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 January 2024 sitting



The graph above shows the distribution of answer categorisations across all 12 questions of the assessment for the January 2024 sitting. Questions 8 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 32% of responses to question 8 graded as 'Competent' and 48% for question 10. By contrast, question 1 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 74.2%, compared with 66.5% for questions 5 to 8, and 58.5% 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 January 2024 assessment paper was the second lowest across all seven 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
<b>Average</b>	<b>4118</b>

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

The table above shows that, across the seven sittings to date, there have been 770 first sit candidates, 668 passing on their first attempt – a first sit passing rate of 87%. There have been 43 resit candidate attempts, with 34 passing, giving a cumulative resit passing rate of 79% (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 813 individual candidate attempts at the Professional Ethics assessment (either first sit or resit) producing 702 ‘Competent’ grades, a passing rate of 86.3% for all candidates across all sittings. Following the January 2024 sitting, there will be 66 candidates still in the system needing to achieve a ‘Competent’ grade in the April 2024 sitting.

#### 5.7.2 Cumulative data: total number of attempts and passes.

<b>Sitting</b>	<b>Total Number of Candidates Sitting</b>	<b>Total Number of Candidates Passing at this Sitting</b>	<b>% of Candidates Passing at this Sitting</b>
<b>Apr-22</b>	112	107	95.5%
<b>Jul-22</b>	25	23	92.0%
<b>Oct-22</b>	9	7	77.8%
<b>Jan-23</b>	213	196	92.0%
<b>Apr-23</b>	59	42	71.2%
<b>Jul-23</b>	51	46	90.2%
<b>Jan-24</b>	344	281	81.7%
<b>Cumulative Total to Date</b>	813	702	86.3%

The above table shows that, to date, there have been 813 attempts (resit and first sit) at the Professional Ethics Exam, of which 705 have resulted in gradings of ‘Competent’ – the overall percentage of attempts which were competent being 86.3%.

### 5.7.3 Cumulative data: distribution of answer gradings by sitting

Grading	April 2022 Sitting	July 2022 Sitting	October 2022 Sitting	January 2023 Sitting
% DNA	0.00%	0.67%	2.78%	1.02%
% Unacceptable	3.20%	4.33%	4.63%	1.02%
% Poor	12.87%	23.00%	26.85%	27.03%
% Satisfactory	48.21%	43.00%	49.07%	51.49%
% Good	35.71%	29.00%	16.67%	19.44%
Grading	April 2023 Sitting	July 2023 Sitting	January 2024 Sitting	Cumulative to date
% DNA	2.54%	1.47%	0.65%	0.87%
% Unacceptable	4.52%	0.98%	5.74%	3.71%
% Poor	34.46%	19.28%	27.20%	25.08%
% Satisfactory	44.63%	51.63%	45.78%	47.85%
% Good	13.84%	26.63%	20.62%	22.49%

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 January 2024 cohort outcome, achieving a 'competency' rating in 66% of responses, was somewhere below the cumulative average of 70%.

### 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 January 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 JANUARY 2024 SITTING

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

Total Number of Candidates	344
Number Passing	281
Passing Rate (%)	81.7%

### 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) 62.5% of January 2024 candidates were deemed to be automatic passes, and a further 19.2% were deemed to have passed following a holistic review of their scripts.

	Apr-22	Jul-22	Oct-22	Jan-23
Total number of candidates	112	25	9	213
Total number of candidates subject to holistic review	15.2%	40.0%	44.4%	41.3%
Automatic Fail	1.8%	4.0%	22.2%	5.2%
Fail at Holistic Review Stage	2.7%	4.0%	0.0%	2.8%
Pass at Holistic Review Stage	12.5%	36.0%	44.4%	38.5%
Automatic Pass	83.0%	56.0%	33.3%	53.5%
	Apr-23	Jul-23	Jan-24	Total to date
Total number of candidates	59	51	344	813
Total number of candidates subject to holistic review	59.3%	15.7%	28.8%	32.1%
Automatic Fail	15.3%	3.9%	8.7%	7.0%
Fail at Holistic Review Stage	13.6%	5.9%	9.6%	6.6%
Pass at Holistic Review Stage	45.8%	9.8%	19.2%	25.5%
Automatic Pass	25.4%	80.4%	62.5%	60.9%

The above table reveals that the January 2024 sitting resulted in: (i) a slightly lower than average number of candidates being considered under the holistic review process (28.8%); (ii) a lower-than-average percentage of candidates subjected to holistic review being confirmed as 'Competent' following the review process (19.2%); and (iii) an average percentage of candidates passing automatically (62.5%). 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	4
6 Satisfactory/Good Responses	21
7 Satisfactory/Good Responses	41
8 Satisfactory/Good Responses	69
9 Satisfactory/Good Responses	60
10 Satisfactory/Good Responses	56
11 Satisfactory/Good Responses	20
12 Satisfactory/Good Responses	10

Number of Failing Candidates With	
3 Unacceptable/Poor Responses	0
4 Unacceptable/Poor Responses	3
5 Unacceptable/Poor Responses	3
6 Unacceptable/Poor Responses	15
7 Unacceptable/Poor Responses	23
8 Unacceptable/Poor Responses	11
9 Unacceptable/Poor Responses	6
10 Unacceptable/Poor Responses	2
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 January 2024 cohort.

Profiles January 2024 Sitting	Unacceptable	Poor	Satisfactory	Good
Strongest Profile - candidate automatically failing with 3 or more "Unsatisfactory" gradings	3	1	1	7
Strongest Profile - candidate automatically failing with 4 or fewer "Good" or "Satisfactory" gradings	0	8	3	1
Strongest profile - candidate failing following holistic review	0	6	5	1
Weakest profile - candidate passing following holistic review	1	6	5	0

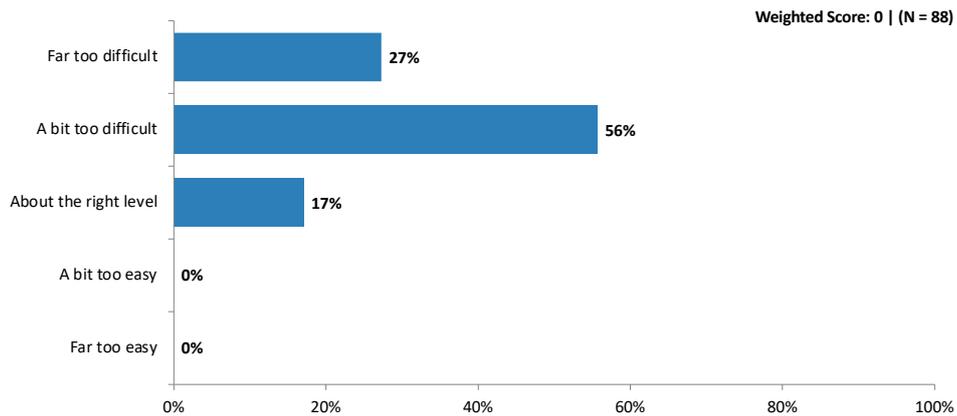
In respect of the candidates being considered in the holistic review process, it should be borne in mind that the determination of a "Competent" or "Not Competent" grading is not driven by a simple mathematical formula, but ultimately rests on the overall view of the quality of the script taken by the 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 "Satisfactory" and six answers graded as "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, and one answer which fell into the "Unacceptable" category. 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 88 candidates (26%).

6.2.2 A summary of the general feedback: Level of difficulty

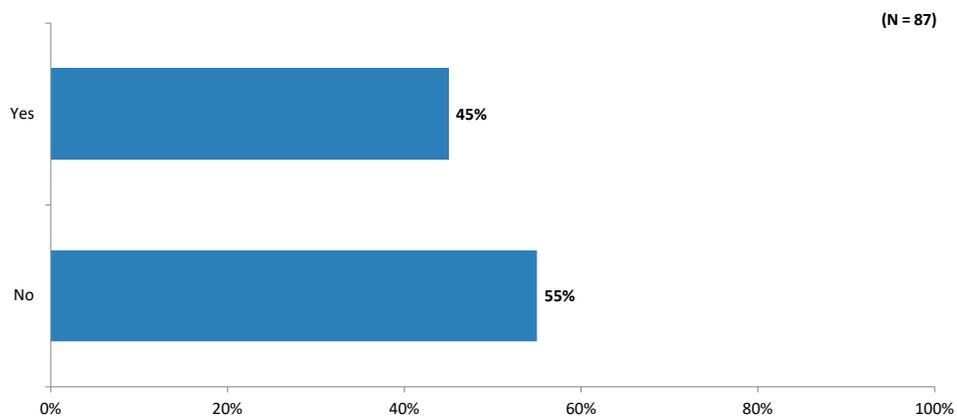
What was your impression of the overall difficulty level of the paper for a barrister at this level of training?



2

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

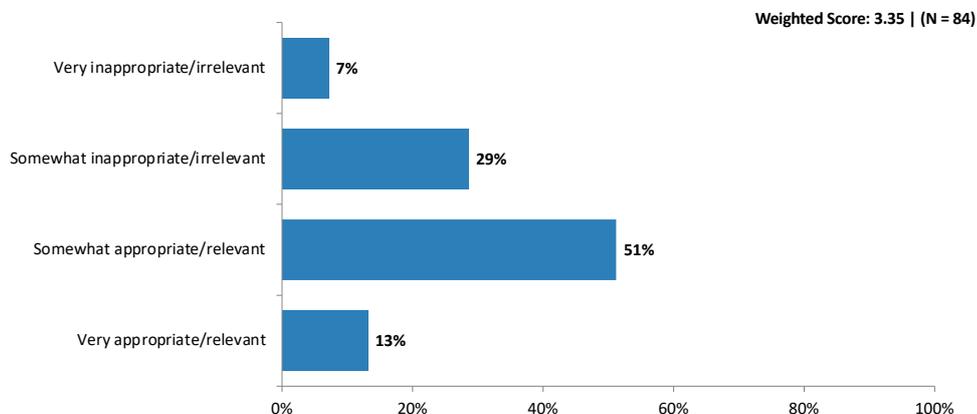
Did you leave any answers blank or incomplete due to insufficient time?



15

## 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?



16



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## 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
no. responding	N/A	3	3	73	12	12	88
% of candidates responding	N/A	8%	33%	34%	20%	24%	26%
% 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%
% of respondents self-reporting as leaving answers blank due to lack of time	N/A	0%	33%	55%	91%	25%	45%
% 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%
Passing rate for this sit	95.50%	92%	77.80%	92%	71.20%	90.20%	81.70%

Of the 191 responses to date, the cumulative breakdown is as follows:

<b>% of respondents confirming that the difficulty level of the paper as a whole was appropriate for a barrister at this level of training</b>	20.8%
<b>% of respondents self-reporting as leaving answers blank due to lack of time</b>	49.6%
<b>% of respondents confirming that the question scenarios were somewhat appropriate/relevant to the experience of early years practitioners</b>	48.4%

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.

#### 6.2.6 Issues under active consideration

The BSB is committed to on-going review of the format of the Professional Ethics assessment to ensure it is rigorous, reliable, and fair to candidates. To this end, the BSB is reflecting on whether the current number of assessment items and the time allowed for completion of the assessment is appropriate. These issues were discussed at the post January 2024 examinations 'Wash Up' meeting and further consideration of these issues will take place during 2024.

Professor Mike Molan  
Chair of the CEB  
10 April 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.</p> <p>Interpretation, analysis and/or evaluation is shallow and poorly substantiated.</p> <p>Little or no evidence of insight.</p> <p>Limited use of information and principles.</p> <p>Not evident that syllabus materials were understood and/or incorporated into answer.</p> <p>Shows a very limited awareness of the key issues and fails to come to appropriate conclusions.</p>
Unacceptable = Not yet competent	<p>The answer contains material which, in the view of the examiners, is so <i>clearly incorrect</i> that, if it were to be replicated in practice, it could significantly affect the client's interests or the administration of justice (such acts or omissions would include behaviour which would require reporting to the BSB) and/or place the barrister at risk of a finding of serious misconduct.</p> <p>An answer which, in the view of the examiners, fails to make a genuine attempt to engage with the subject-matter of the question (e.g., the candidate's response amounts only to "<i>I do not know the answer to this question, but I would telephone my supervisor for assistance</i>") will fall into the "clearly incorrect" category of answers.</p> <p>A failure by a candidate to provide any answer will be treated in the same manner as a candidate who provides a "clearly incorrect" answer.</p>