



REGULATING BARRISTERS

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

**Pupillage stage Professional Ethics
January 2025 Sitting**

1. EXECUTIVE SUMMARY

The tenth sitting of the pupillage component Professional Ethics examination was held on Thursday 9 January 2025 at 2pm. The summary of results is as follows:

January 2025	
Number of Candidates	497
Number Passing	448
Passing Rate (%)	90.1%

All Exams To-Date			
Average Pass Rate over 10 sits			86.8%
	Apr-22	Jul-22	Oct-22
Number of Candidates	112	25	9
Number Passing	107	23	7
Passing Rate	95.5%	92.0%	77.8%
	Jan-23	Apr-23	Jul-23
Number of Candidates	213	59	51
Number Passing	196	42	46
Passing Rate	92.0%	71.2%	90.2%
	Jan-24	Apr-24	Jul-24
Number of Candidates	344	115	62
Number Passing	281	100	56
Passing Rate	81.7%	87.0%	90.3%
	Jan-25		
Number of Candidates	497		
Number Passing	448		
Passing Rate	90.1%		

The January 2025 sitting saw 497 candidates attempting the assessment. The passing rate was above the average across the 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 2025 sitting and no interventions required in respect of the substantive content of any of the assessment questions. The intervention in respect of the mark scheme for question 4, and subsequent Chair's action is detailed at 5.7.1 (Q.4). For more detail on candidate journey data see 5.8.1.

2. THE ASSESSMENT OF PROFESSIONAL ETHICS

2.1 Bar Training

In 2020, following on from the Future Bar Training reforms, the Bar Professional Training Course (BPTC) was replaced as the vocational stage of training by a range of permitted pathways that could be used to deliver Bar Training. Authorised Education and Training Organisations (AETOs) providing a Bar Training course are required to provide tuition in, and assessment of, professional ethics to a foundation level. The Centralised Examinations Board (CEB) is not involved in the assessment of professional ethics in the Bar Training courses delivered by AETOs.

2.2 Professional Ethics assessment during pupillage

Following a transition period, passing the Professional Ethics assessment during pupillage is now¹ a requirement for all pupils unless they have a specific exemption authorised by the BSB. Pupils cannot obtain a full practising certificate until they have demonstrated their competence in ethics by passing the pupillage Professional Ethics assessment.. The setting and marking of the pupillage component Professional Ethics assessment is overseen by the CEB, on behalf of the Bar Standards Board (BSB). The first sitting of the pupillage component assessment was in April 2022. To be eligible to attempt the assessment, candidates must have completed three months of pupillage by the date of their first attempt at the examination (unless granted a reduction in pupillage). Examinations are normally offered three times per year and there is no limit on the number of attempts by candidates.

For more information on the background to the introduction of the pupillage component Professional Ethics assessment, see the BSB paper published in April 2020 available here: <https://www.barstandardsboard.org.uk/training-qualification/becoming-a-barrister/pupillage-component/intro-of-professional-ethics-assessment.html>

¹ From the July 2024 Ethics assessment onwards

3. THE PUPILLAGE COMPONENT PROFESSIONAL ETHICS EXAMINATION

3.1 What is assessed – Syllabus

A Professional Ethics syllabus team, comprising academics and practitioners advises the CEB regarding the syllabus for the Professional Ethics assessment and a final update, for all 2024 sittings, was provided to candidates in October 2023, see: <https://www.barstandardsboard.org.uk/static/b6ade09d-d302-479d-97803aa988157072/BSB-Professional-Ethics-Pupillage-WBL-Assessment-Syllabus-23-24.pdf>

3.2 How is Professional Ethics assessed during the pupillage component?

The Professional Ethics assessment is an exam comprising 12 questions. All questions are equally weighted. Consecutive questions may or may not be connected. The exam is three hours long and 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.

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 BSB's Adjustments and Other Arrangements Policy, found here: <https://www.barstandardsboard.org.uk/static/fc606779-c7ba-4d48-b9258bc52c2ce000/Professional-Ethics-Adjustments-and-other-arrangements-policy.pdf>

4. QUALITY ASSURANCE

4.1 Pre exam: paper drafting and confirmation process

The bank of material used for compiling the pupillage stage Professional Ethics assessment is comprised of questions written by legal practitioners and professional legal academics who have received training from the Professional Ethics Examining Team. The question writers are allocated topics from the syllabus by the Chief Examiner, and all submitted questions, along with suggested mark schemes and indicative content (suggested answers), are reviewed by the Examining Team (which has a strong practitioner representation). The Examining Team compiles a draft examination paper, ensuring that it complies with core assessment principles including level of difficulty, fairness to candidates and syllabus coverage. Each draft paper and accompanying draft mark scheme and indicative content statement is considered at a paper confirmation meeting, convened by the Chair of the CEB. The purpose of the paper confirmation meeting is to ensure that the assessment is suitably rigorous, fair to the candidates, and that the content is both sufficiently plausible and comprehensible. In addition, the mark scheme for each question is reviewed to ensure that it is accurate, appropriate, and proportionate. Following the paper confirmation meeting, the paper, mark scheme and indicative content statement will undergo a syllabus check by the syllabus officer before being reviewed by a Pilot Tester (Paper Scrutiniser) and Proof-reader. The Chief Examiner responds to comments and suggestions arising from these further checks, incorporating changes to the paper where necessary. Once these processes have been completed the examination paper is uploaded to the online system by the BSB Exams Team ready for use in the next scheduled examination.

4.2 Post exam: standard setting and mark scheme development

- 4.2.1 Standard setting takes place following the sitting of the examination. Standard setting is the process of differentiating between the levels of candidate performance and, in this context, whether a level of candidate performance is to be deemed 'Competent' or 'Not Competent'. This process ensures that a consistent pass standard can be maintained notwithstanding that the level of challenge offered by one examination paper may vary compared to another due to the nature of the questions set. The standard setting team is comprised of legal practitioners and academics, supervised by the Examining Team.
- 4.2.2 The standard setting exercise requires standard setters to identify the pass standard for each of the 12 questions. In effect this requires standard setters to identify what should appear in the answers of a candidate displaying the threshold level of competence in Professional Ethics as referenced in the Professional Statement as well as the definition of the classifications of Competent and Not Competent respectively, details of which have been published on the BSB website (see above). Standard setters do not expect candidate responses to be of the quality that might be expected from a KC or leading junior, but of an individual who has completed three months of pupillage and who, on the basis of their answers, can be regarded as "comfortably safe".

4.2.3 Standard setters also bear in mind the context in which the assessment is sat namely that:

- (i) candidates have had exposure to professional practice for a minimum of three months (unless granted a reduction in pupillage), having successfully completed the vocational element of training, including foundation level Professional Ethics;
- (ii) the assessment is a three hour long open book exam; and
- (iii) the objective of the assessment is to test candidates' application of knowledge.

4.2.4 For the first part of the standard setting process, standard setters are asked to identify (independently of each other), the content for each question they consider the notional 'minimally competent candidate' should be able to provide by way of a response for each question. The standard setters are provided with copies of the draft mark scheme and indicative content statement produced by the Examining Team and confirmed as part of the paper confirmation process and are also provided with a sample of candidate answers for each question. During this period, members of the Examining Team review a wider sample of candidate answers, collecting additional material or content for discussion. Responses from the standard setters regarding expected content for each question are collated by the Examining Team (along with the additional content) and circulated for discussion at a plenary meeting attended by all standard setters, the Examining Team, and BSB Exams Team. The submitted content is discussed at the plenary standard setters' meeting and the pass standard for each question is agreed, along with the content of the mark scheme to be provided to markers, detailing the criteria for four possible gradings: 'Good'; 'Satisfactory' (both 'Competent'); 'Poor'; and 'Unacceptable' (both 'Not Competent'). The Independent Observer attends the plenary standard setters' meeting and comments on the process where necessary.

4.2.5 Following the standard setting meetings the Examining Team applies the final mark scheme to a further sample of responses (that have not been seen by standard setters) to test the amended mark scheme before it is shared with markers. The change is helpful in ensuring that markers understand how to apply the final mark scheme and in resolving any remaining issues during the marking stage.

4.3 Post exam: markers' meetings and the marking process

- 4.3.1 Before any 'live' marking is undertaken, a markers' meeting is convened to give markers the opportunity to discuss the operation of the mark scheme. Prior to the meeting, markers are provided with a number of sample scripts (drawn from the candidate cohort) which they mark independently. Markers submit the marks and the feedback to be given to the candidate before the meeting. "Think-aloud marking" takes place using the sample scripts along with further samples so that all markers within the team understand the application of the scheme. Following this meeting, the mark scheme may be further amended to include instructions to markers in respect of specific content of the scheme for particular questions.
- 4.3.2 Markers are allocated two specific questions to mark. Marking teams are supervised by a team leader (an experienced marker) who also marks scripts and moderates the marking of their team. Team Leaders meet with the Examining Team in advance of the markers' meeting and are given guidance on how to perform their role. Feedback is given to all markers during the moderation/calibration process which takes place following the markers' meeting. The marking by Team Leaders is first moderated by the Examining Team, and then (once the Examining Team is satisfied) Team Leaders go on to moderate their marking teams. The Examining Team also continues to carry out dip sampling during the live first marking period. All scripts are blind double marked, and where the two markers disagree a further review process ("adjudication") 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 to approve or, where the Team Leader grades a script 'Unacceptable' during the adjudication process (the script not having previously been graded as such by *both* markers), 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 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, and board members

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, and the Head of Exams for the BSB. 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:

- (i) an enhanced clerical error check which involves the BSB checking that the results have been captured and processed correctly; and/or
- (ii) a review, on the grounds that the CEB, in confirming individual and cohort results for the centralised assessment in Professional Ethics, has acted irrationally and/or in breach of natural justice. Candidates may submit joint applications if they believe that the CEB has acted irrationally and/or in breach of natural justice in respect of cohort results (ie a decision taken regarding whether to make an intervention relating to a cohort as a whole).

See further: <https://www.barstandardsboard.org.uk/uploads/assets/1ec417a2-c574-4105-a5f36d40416d26f1/c8af002b-0266-41d0-a3980d5f73fcd07a/Professional-Ethics-regulations-governing-candidate-review-paper-based-applications.pdf>

4.8 Release of Results and Feedback to Failing Candidates

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

Candidates who have failed the exam receive feedback on each of the questions which were scored 'Poor' or 'Unacceptable'. Candidates who have failed the exam three times are also provided with more holistic feedback covering all three attempts they have made at the exam. Failing candidates can access the commentary on the operation of the assessment (5.6.1 below) in conjunction with the individualised feedback provided.

5. THE JANUARY 2025 PROFESSIONAL ETHICS EXAMINATION RESULTS

5.1 Report from the Examinations Manager: candidate numbers

5.1.1 The Examinations Manager confirmed that 568 eligible pupil barristers were identified by the BSB Exams Team. After the end of the booking window and cancellation deadline, 506 candidates were registered to take the January 2025 Professional Ethics Assessment. Of these, 497 sat and completed the examination. Of the nine booked candidates who did not complete the exam, three were 'no-shows'; the other six were late cancellations due to a variety of personal and professional matters.

5.1.2 Of the 497 candidates attempting the assessment, 328 (66%) sat remotely-proctored (Online-Invigilated/OI) exams, and 169 (34%) sat the exam in a test centre (TC). TC candidates sat at 16 sites across 13 cities in England and Wales. Seven candidates sat the exam across two days (8 Jan and 9 Jan) as part of their reasonable adjustments. All other candidates sat the entire exam on 9 January. Although a number of candidates had access to paper copies of the examination materials as a reasonable adjustment, no candidates entered their responses on paper.

5.2 Report from the Examinations Manager: operational issues

5.2.1 Invigilation Reports were received from all of the test centres, as were five incident reports. Two incident reports related to candidates attempting to use the "CTRL+F" function to search the BSB Handbook, which is not possible within the Test Centre test viewer; one related to an individual candidate whose workstation was faulty, but the test centre was able to pause their exam and move them to a working computer. The other two related to an issue at a test centre in London which affected a group of candidates.

5.2.2 The inability to use the "CTRL+F" function in a test centre has caused frustration for some candidates in the past. It was agreed that the guidance on this could be improved.

5.2.3 A number of candidates at the London test centre relating to viewing both the BSB Handbook and the exam paper at the same time. Action has been agreed with Surpass to investigate the cause of this issue. All 21 affected candidates were invited to apply for extenuating circumstances and given an extended deadline within which to do so. They were advised that the Extenuating Circumstances Panel would consider all applicants under a single "case" and apply the same decision to any candidates who submitted an application. Nineteen candidates submitted an application as a result.

5.2.4 Nothing arising from The Senior Examinations Officers' review of test centre documentation resulted in any action under the Examination Misconduct Policy.

5.3 Report from the Examinations Manager: academic misconduct

- 5.3.1 A “Red-Amber-Green” (RAG) Report was submitted by OI Proctors, who raised “red flags” with regard to 16 candidates; and “amber flags” for 15 candidates. The Senior Examinations Officers reviewed all red and amber flags, as well as a random sample of 33 “green flag” candidates.
- 5.3.2 The Senior Examinations Officers stood down all other red and green flags aside from four which were marked for further discussion. Following that discussion, two candidates were referred for an investigation under the Examinations Misconduct Policy, and both were found to have committed a violation of the Examination Requirements. Following receipt of the investigator’s report and the candidates’ representations, The Examinations Manager referred both cases to an Examinations Misconduct Panel.
- 5.3.3 The Examinations Panel Considered both cases separately but reached the same decision in each: that examinations misconduct had occurred, the candidates’ results should be voided, but they should not be barred from reattempting the assessment at a later date.

5.4 Report from the Examinations Manager: Extenuating Circumstances

- 5.4.1 The Extenuating Circumstances Panel received eight cases. One of which related to the 19 candidates from the London test centre mentioned at 5.2.3 (above). The other seven all related to individual circumstances. The case relating to 19 candidates was accepted, as were four of the other seven cases.
- 5.4.2 Three cases were rejected. Two of these related to purported technical problems, but without any evidence that the candidate had alerted the proctor or invigilator at the time or tried to contact the BSB. No reports were received from the test centres or OI Proctors which could be used to corroborate the applicant’s statement. One application was rejected on the basis that the matter the applicant claimed caused a disadvantageous effect on their exam was part of standard procedures for pre-exam checks, and the applicant had misunderstood that these did not affect total exam time.
- 5.4.3 As a result of the Extenuating Circumstances Panel deliberations, four “Not Competent” results were set aside.

5.5 Report from the Chief Examiner on the standard setting process

- 5.5.1 Following the sitting, a sample of scripts was selected for the purposes of standard setting. Eight candidate responses were chosen per question.
- 5.5.2 A team of standard setters comprising legal practitioners and academics was selected. The team was provided with a briefing and written guidance on their tasks for the standard setting process. They were provided with the exam paper, the sample scripts as well as the indicative content and suggested

mark scheme drafted by the examining team as part of the paper confirmation process. Following the briefing, the standard setters undertook the first part of standard setting, namely the task of identifying, independently of each other, the standard expected for each of four level descriptors for each question.²

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

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

- 5.6.1 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 particular responsibility.
- 5.6.2 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.
- 5.6.3 At the markers’ meeting, a general briefing session for all marking teams focused on the need to provide accurate and meaningful feedback for each answer, and particularly for answers which were graded Poor or Unacceptable. Following the plenary markers’ meeting, 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 submitted by the candidature were provided for discussion and grading once the earlier set of samples had been considered.

² See Appendix 1

- 5.6.4 Following the markers' meeting, where necessary, the examining team discussed and amended the mark scheme to provide guidance as to how to address particular issues which had arisen during the markers' meeting.
- 5.6.5 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 similar number of responses which was moderated by the Team Leader. Feedback was provided to all markers. Where necessary, discussions between Team Leaders and the examining team took place regarding the operation of the mark scheme during and following this calibration exercise, and further guidance was provided to all affected markers in these circumstances. Responses which were discussed and resolved during the moderation/calibration process were submitted as final grades by either the member of the examining team or Team Leader responsible for the relevant question. Where this was considered necessary, a small number of markers were required to complete a further batch of marking which was moderated by the Team Leader. Live double-blind marking then took place ie each response was blind marked by two markers and written feedback was provided by each marker.
- 5.6.6 The examining team also undertook dip sampling of the marking teams and Team Leaders following moderation and during the live marking period. Where required, individual markers were provided with appropriate direction in relation to specific issues arising out of their marking.
- 5.6.7 Where both markers graded a response with the same grade, this grade stood as the final grade, with the exception of Unacceptable responses which were escalated to and reviewed by the Team Leader.
- 5.6.8 Where markers graded a response differently, the response was adjudicated upon shortly thereafter by the Team Leader who could confirm one or other of the grades or insert his/her own grade and feedback for the response. This grade was then submitted as the final grade. Where a response was graded Unacceptable by one of the original markers and the Team Leader agreed that it merited an Unacceptable grade, the response was escalated for review by the examining team. Where a Team Leader graded a response Unacceptable in circumstances where neither marker had given such a grade, the response was also escalated to the examining team. In a limited number of circumstances, the member of the examining team discussed the content of the response with the Chief Examiner before approving the Unacceptable grade.
- 5.6.9 Following agreed marking, all results were collated according to the number of Good, Satisfactory, Poor and Unacceptable answers achieved.

5.7 The operation of the assessment – results for each question

5.7.1 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. Note that for reporting purposes in this section the total shown for 'Unacceptable' responses will also include any 'Did Not Attempt' ('DNA') responses.

SAQ 1							
Unacceptable		Poor		Satisfactory		Good	
#	%	#	%	#	%	#	%
2	0%	124	25%	148	30%	223	45%

Broad syllabus areas covered: This scenario required candidates to identify the relevant ethical principles that apply when working in a public place and handling confidential information. Specifically, candidates were expected to identify issues relating to confidentiality (CD6) in relation to discussing cases with clients in a public place and allowing documentation and photographs to be overseen by others. The scenario also required candidates to consider the extent to which a barrister may discuss evidence with potential witnesses.

Key observations from Chief Examiner on cohort performance: This question was generally answered well, with the majority of candidates identifying that a barrister must not rehearse, practise with or coach a witness. Although all candidates identified the applicability of CD6, there was a varying degree of application to the facts. Weaker candidates only identified CD6 generally or in relation to the photographs, without picking up on the duty of confidentiality owed to two individual clients whom the barrister was speaking with in public. Stronger candidates were able to identify and discuss each potential breach of CD6 by the barrister as well as dealing with the data protection issues that may arise from the breach that had occurred.

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	
#	%	#	%	#	%	#	%
6	1%	128	26%	110	22%	253	51%

Broad syllabus areas covered: This question required candidates to assess the barrister's ability to accept and carry out instructions: first, in relation to public access work, secondly, identifying a conflict of interest in accepting instructions and, finally, in respect of carrying out client instructions, where to do so would amount to conducting litigation.

In this scenario, candidates needed to identify that the barrister was not authorised to accept public access instructions and needed to set out the basis of that assessment in line with the rules. The facts clearly set out a matrix which gave rise to a personal relationship in which the barrister was unable to maintain her independence if she were to accept the instructions. Candidates were required to demonstrate that they understood that what the barrister had been asked to do by her client, namely lodge documents with the court, amounted to conducting litigation, which she was not authorised to do.

Key observations from Chief Examiner on cohort performance: It was noted that while candidates overall gave thorough answers to this question, weaker candidates failed to identify the independence point that arose from the close relationship between the barrister and the two parties in the case. This was either missed or incorrectly described as a conflict of interest. Those candidates who fell into the Unacceptable descriptor when answering this question primarily did so for a failure to properly understand the rules on conducting litigation, wrongly stating that public access qualification allowed the barrister to conduct litigation by serving documents on the court.

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	
#	%	#	%	#	%	#	%
5	1%	223	45%	126	25%	143	29%

Broad syllabus areas covered: This scenario tested the candidates' understanding of the basis upon which a barrister can continue to act for a client in criminal proceedings in circumstances where the client has admitted to the barrister that he is guilty of offence charged but wishes to maintain a 'not guilty' plea. The question further tested candidates' knowledge and ability to balance the duties owed in relation to acting in the client's best interests and the requirement to maintain confidentiality where information is disclosed by the client which it may be in the client's best interests to disclose, but in relation to which the client does not give his consent to be made known. The client in the scenario was also vulnerable by reason of himself being a victim of past sexual abuse and had previously been arrested for a similar offence to that which was the subject of the current proceedings, and as such further issues regarding confidentiality were engaged.

Key observations from Chief Examiner on cohort performance: Most candidates identified that the barrister could not advance a positive case on behalf of the client and would be limited to testing the prosecution case. Many candidates also went on to identify that the barrister would need to withdraw if the client insisted on a positive case being run. A number of candidates also identified and were able to deal with the two separate confidentiality/CD6 issues correctly, although many candidates only applied CD6 more generally to the scenario, or to only one of the two confidentiality points. Where candidates identified that the client was vulnerable, most were also able to go on and offer some further discussion of the additional considerations the barrister should have regard to considering this fact, thus also making some Good points.

The most common error made by candidates was not identifying that the client was vulnerable. Some candidates covered all other satisfactory points and a number of the good points but fell into the poor category overall as a result of the failure to identify this point. As noted above, another common failing was candidates not adequately addressing the confidentiality points as specific issues, and only referring to CD6 more generally, or in relation to not disclosing the confession, which was not a specific point provided for on the mark scheme. This could in part have been due to the fact that a lot of candidates misunderstood or misread the issue in relation to the previous arrest, first referring to it as a previous conviction, and secondly applying gC12 rather than seeing it as a CD6 issue.

As noted above, the better candidates identified the majority if not all of the satisfactory points and were also able to expand upon the steps that the barrister should take as a result of the client's vulnerability. They were also able to offer some discussion as to the benefit of disclosing the previous sexual abuse to the court/judge, and the importance of advising and explaining the same to the client. Better candidates also tended to deal with the circumstances in which the barrister may have to withdraw, and that in the event the same arose, the need to explain the reasons for doing so to the client.

No intervention necessary; results for question confirmed and applied to candidates.

Broad syllabus areas covered: This scenario tested candidates' understanding of the basis upon which a barrister can continue to act for a client where she becomes aware that the client is in receipt of Legal Aid to which they are not entitled. The question raises issues concerning the application of CD3 and CD5 in light of the barrister's knowledge that the client is not entitled to the Legal Aid, and that the same has been obtained by way of incorrect information. There were also issues related to the instructing solicitor's views that the Legal Aid entitlement issues were merely an 'administrative error', and that proceedings should not be delayed as a result.

Key observations from Chief Examiner on cohort performance: Most candidates identified the key rule, namely that a barrister must cease to act in circumstances where they become aware that Legal Aid has been obtained as a result of false or inaccurate information and action to remedy the situation is not immediately taken by the client (rC25.1). The majority of candidates also identified the principle that the barrister should not allow herself to be influenced by the comments made by the instructing solicitor, although not all candidates necessarily linked this to CD4. For example, some candidates linked this statement to rC20, and others to rC15. Where candidates had clearly identified the relevant principle, it was considered appropriate to mark them as satisfactory in relation to this point, despite the fact that there may have been no express reference to CD4. The most common omission in relation to the satisfactory criteria was that of CD5, however, where the candidate's answer was satisfactory in the other respects, this omission was not sufficient to necessitate them being graded as poor. Candidates did not always explicitly refer to CD3 when dealing with the duty of the barrister to ensure that remedial action was taken, however, where candidates had dealt sufficiently with the application of rC25.1, the remedial steps that should be taken and that the barrister should not continue with the instructions, this was not fatal as the clear appreciation of the relevant principles was engaged.

Some candidates interpreted the scenario as suggesting that the client had already failed to take remedial action and as such these candidates did not explore the steps that could/should now be taken. Most of these candidates still identified r25.1 which showed they were aware of the rule that the barrister must withdraw only if remedial action is not taken. These scripts provided a challenge in relation to whether the candidate had done enough not to be graded as poor for failing to identify the need for remedial action to be taken. Generally, if a candidate

identified that steps should be taken, even if they did not discuss in detail, that was taken as sufficient for satisfactory but was reflected in the feedback.

The most common error made by candidates was not identifying or dealing with the comments made by the solicitor at all. As noted above, many candidates did identify the principle here that the barrister should not allow herself to be influenced, but did not always specifically link this to CD4. These candidates generally did enough not to be marked as poor. However, candidates who failed to identify CD4 or deal otherwise with the comments made by the solicitor were graded as poor.

Decision of the exam board in relation to question:

The Exam Board noted that the data presented to the board indicated a relatively high number of responses graded “Unacceptable” for this question and discussed at length the appropriateness of mark scheme point ‘U2’ which provided that an answer must be graded as “Unacceptable” where the candidate had asserted that the barrister should report a potentially fraudulent application for Legal Aid to the Legal Aid Agency (LAA). This element of the mark scheme had been predicated on the assumption that such action would amount to a serious breach of client confidentiality, and that any candidate proposing this course of action in their answer to this question would have their response graded ‘Unacceptable’ as a consequence. Following extensive discussion, it was concluded that the rules on this issue were not sufficiently clear to justify such an absolute position, there being a counter-position that the barrister would have been under a duty to report fraud to the LAA, and that this would protect the barrister from any claim in respect of breaching client confidentiality.

On this basis the Exam Board agreed that mark scheme point ‘U2’ should be removed from the mark scheme for this item. The decision then prompted a further discussion as to how scripts that had attracted an ‘Unacceptable’ grading following the application of mark scheme point ‘U2’ should be dealt with. It was agreed that all scripts where: (i) a candidate’s overall performance had been adjudged ‘Not competent’; and (ii) the candidate had been graded ‘Unacceptable’ in respect of Q4 because of the operation of mark scheme point ‘U2’ were to be reviewed by the Chief Examiner’s team after the Exam Board, and that Chair’s action could be taken to ratify any changes to any candidate’s ‘Competent/Not Competent’ status that resulted. Three candidate scripts were identified as falling within these parameters and therefore having the potential to benefit from the removal of the ‘U2’ mark scheme point.

Following a review of the three “Not competent” candidates’ scripts impacted by the removal of mark scheme point ‘U2’, the Chief Examiner advised the Exam Board Chair that two candidates had been regraded as “Competent” overall, and one remained “Not Competent”.

The scripts of four further candidates who had been graded as “Not Competent”, but who fell outside the parameters for review (ie the scripts were irredeemable fails regardless of the operation of the U2 mark scheme point), were nevertheless reviewed to ensure that any feedback given to these candidates in respect of the U2 mark scheme point was accurate.

Thus, prior to the Exam Board's intervention there were 25 responses to Q.4 graded 'Unacceptable'. Following the review of those scripts falling within the review parameters outlined above, and the review for feedback purposes of the 4 irredeemable 'Not Competent' scripts to ensure accurate feedback, the figure of 25 was reduced to 19, the total used for reporting purposes in this report.

Finally, it should be acknowledged that within the 19 scripts, there were 18 scripts submitted by candidates who had been graded as 'Competent' regardless of the U2 mark scheme point. These scripts were not reviewed as the issue had no bearing on the overall grade achieved by the candidate (the assessment outcome being a binary 'Competent/Not Competent'). Any review of those scripts would have been a disproportionate use of resources. Had these remaining 18 scripts been reviewed, however, there may have been a further reduction in the number of responses to Q.4 graded 'Unacceptable', with the consequence that the figure of 19 'Unacceptable' responses to Q.4 used in this report is likely to be a (non-material) over-reporting of the actual figure.

SAQ 5							
Unacceptable		Poor		Satisfactory		Good	
#	%	#	%	#	%	#	%
8	2%	46	9%	341	69%	102	21%

Broad syllabus areas covered: This question concerned a sole practitioner who has been practising for 40 years, is not public-access qualified, whose website needed updating. The question raised issues as to what hyperlinks might be necessary. Candidates were required to identify and apply the relevant ethical principles to this scenario, focusing on the barrister's obligations under the BSB transparency rules. The question tested candidates' understanding of the regulatory framework governing barristers' online presence and the importance of ensuring that information provided to potential clients is up to date, accurate, and accessible.

Key observations from Chief Examiner on cohort performance: On the whole this question was well-answered by the candidature who identified the key points. There were a frequent number of Good answers, which referred to rC163, which requires self-employed barristers to consider BSB guidance on transparency and/or explaining that the annual website review is necessary to ensure compliance with both rC103 and rC159. Stronger responses also recognised that the barrister should engage with the BSB if any issues arose and that broken or incorrect links could be seen as equivalent to their absence, undermining accessibility. Some candidates also considered the importance of client confidentiality and data protection for the barrister when outsourcing website updates to his nephew. The weaker answers generally failed to identify or apply the Compliance with price, service and redress transparency rules or CD10 and/or failed to address one of the key issues within their response.

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	
#	%	#	%	#	%	#	%
6	1%	59	12%	192	39%	240	48%

Broad syllabus areas covered: This question concerned a senior family practitioner who is a member of a newly merged chambers and has taken on the role of equalities officer, with responsibility for ensuring a fair allocation of work. The fact scenario involved a junior barrister from a minoritised ethnic background who approaches the senior family practitioner with his concerns about unfair allocation of work within chambers. Candidates were required to identify and apply the relevant ethical principles to this scenario, focusing on the barrister's obligations under the BSB's equality and diversity rules. They needed to assess whether the allocation of work may be unfair and whether there is a risk of discrimination based on race or ethnicity. The question tested candidates' understanding of the duties chambers owe to their members, the role of an equalities officer in monitoring fairness, and the steps that should be taken to address concerns about distribution of work.

Key observations from Chief Examiner on cohort performance: Generally speaking, this question was addressed well by candidates with a proportion of candidates being awarded Good grades by identifying that the concerns raised may amount to an allegation of discrimination under the Equality Act 2010 and highlighting the need for barristers to take reasonable steps to ensure chambers is run competently and efficiently, including ensuring that clerks are carrying out their duties properly. Stronger responses also highlighted that chambers should have procedures for handling complaints about work allocation and that equality monitoring should include data collection and analysis to identify any disparities in work distribution, and if disparities are found, remedial action must be taken to address any disadvantage suffered. The Good answers also recognised the need to reassure the junior barrister and ensure he is not victimised for raising concerns.

The poorer answers, having recognised issues relating to the distribution of unassigned work, failed to recognise the obligation to ensure the fair distribution of work. The majority of poor responses were based on candidates' failure to identify that the senior barrister had a duty to investigate the complaint: their focus was on the barrister reviewing or monitoring rather than investigating with the implication that this obligation was on chambers.

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	
#	%	#	%	#	%	#	%
12	2%	120	24%	273	55%	92	19%

Broad syllabus areas covered: This question involved a barrister who was seeking to expand his practice and had spoken to his clerk about ways in which to do that. Three individual arrangements for work were then presented to the barrister. The first regarded a conversation with an instructing solicitor where the barrister offered to entertain staff at the solicitor's firm every time work was sent to them. The second involved an arrangement with a solicitor to carry out pro bono work for them and, if the barrister did so, the solicitor promised to consider them for paid work. Finally, there was an arrangement agreed by the barrister's clerk on their behalf regarding a discount on all of their cases. The question required candidates to identify that the arrangement for entertainment amounted to either a referral fee or excessive entertainment and therefore should not have been made. The candidates also needed to discuss the other two scenarios and, whilst they could come to any reasoned conclusion, they must have given thought to the ethical duties placed upon the barrister either around the potential for the arrangements amounting to a referral fee or the application of core duties.

Key observations from Chief Examiner on cohort performance: There was a mixed performance on this question. Most candidates were able to identify that the first arrangement breached ethical duties and should not be continued with. The weaker candidates did not address one, or both, of the other arrangements at all. The particularly weak candidates made unqualified assertions that arrangements could simply be proceeded with.

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	
#	%	#	%	#	%	#	%
7	1%	74	15%	236	47%	180	36%

Broad syllabus areas covered: This question focussed on a situation where a barrister had advised that some further evidence must be obtained in a case which was due for trial shortly, but the solicitor failed to obtain it and wanted to carry on without it. This was complicated by the fact that the barrister was worried about not getting enough work and the solicitor was someone who sent her work and was promising more work. Candidates needed to identify that the barrister had a duty to ensure her client was aware that, in her view, the further evidence was still required. They also needed to identify that the barrister should maintain her independence and not be influenced by the further work from the solicitor or the fact that the solicitor took a different view about the further evidence.

Key observations from Chief Examiner on cohort performance: Overall, candidates performed satisfactorily in this question. Most candidates were able to

identify the need for the barrister to ensure the client was aware of her opinion and addressed how that could be achieved. Most candidates addressed the need for the barrister to maintain her independence. Some stronger candidates were able to identify a way forward for the barrister in asking for an adjournment to obtain the evidence and ensuring that the barrister was honest with the court as to why it has not been obtained thus far. A few weaker candidates concluded that the barrister should withdraw from the case or proceed without the evidence and without informing the client of their view.

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	
#	%	#	%	#	%	#	%
6	1%	93	19%	174	35%	224	45%

Broad syllabus areas covered: This scenario required candidates to demonstrate their knowledge and application of the BSB's Social Media Guidance. A satisfactory answer expected candidates to identify the application of the BSB's Social Media Guidance to the scenario, and the specific application of CD5 when using social media. Candidates were further expected to address the need to act in the client's best interests in terms of the manner and method of communication used, and in particular the need to ensure that the client's confidentiality will not be at risk, and any remedial action that the barrister should now take in the event of a potential breach of the rules.

Key observations from Chief Examiner on cohort performance: Most candidates were able to identify and apply CD5. Most candidates were also able to discuss and identify some relevant application of CD6 in relation to the posts by the barrister. Specifically, they identified the location and identity of the sender, as well as the geotag, which in turn would identify the location of the conference and could lead to the identification of the client's home address. Many candidates were able to offer some explanation as to the remedial action that the barrister should take in light of the same that was sufficient to enable them to be marked as satisfactory. Better candidates were able also to identify the fact that whilst one channel had been agreed as a method of communication by the client, the same was inappropriate given the association with obscene and derogatory content, and that there had been a potential breach of GDPR by the barrister given the retention of data by the channel concerned.

The main error by failing candidates was not suggesting any remedial action at all. This automatically rendered such candidates as poor. There were some answers that were otherwise very good and covered most other points from the mark scheme but which had failed to take the final important step of identifying practical remedial action. A considerable number of candidates mentioned remedial action only briefly eg for the barrister to report himself to the BSB or the Information Commissioner's Office (ICO). The majority of candidates did not refer explicitly to

the BSB Social Media Guidance. Nearly all though included language from the guidance which showed they were aware of it, or engaged with the relevant duties in it, mostly CD6 and CD5. Of the candidates who did refer to the Social Media Guidance (maybe one third of answers), there were many who referred to it by name but only in passing, rather than directly applying or quoting content.

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	
#	%	#	%	#	%	#	%
6	1%	182	37%	193	39%	116	23%

Broad syllabus areas covered: This scenario required candidates to identify the relevant rule in relation to pleading fraud, and to then apply the same to the facts of the scenario in order to determine whether the barrister could in fact do as the client wished, which was to raise an allegation of fraud in the particulars of claim. The scenario therefore engaged CD3, CD5 and rC9.2(c). The facts of the scenario also gave rise to the need to consider the duties in relation to independence (CD4) and potential conflict of interest in light of the fact that the client is a professional rugby player seeking to bring a claim against his former employer, and the barrister is a rugby fan who supports the club that is the main rival of the client's former employer. A satisfactory answer expected candidates to identify that the barrister could not plead the allegation of fraud since there was not reasonably credible material to establish an arguable case of fraud (rC9.2(c)). Candidates were also expected to identify in doing so that the barrister's duties under CD2 and CD7 in terms of acting in the best interests of the client and providing a competent standard of work and service are subject to his duty not to mislead (CD3). Candidates needed to identify that if the client insisted on the allegation being pleaded, the barrister would have to withdraw, but if, having provided the explanation as to why he could not plead the allegation to the client, the client was content for the barrister to continue to draft the particulars of claim without such allegation, the barrister could continue to act. Finally, candidates were expected to deal with CD4 by identifying that the barrister should disregard the client's comments about his team affiliation and the reference to his clerk, and the need to maintain his independence in this regard.

Key observations from Chief Examiner on cohort performance: The majority of candidates were able to identify to some extent that the barrister must not plead the allegation of fraud without reasonably credible material, and most cited either r9.2(c) and/or CD3 when doing so. Many also referenced CD1 as part of this discussion. Many candidates identified that the barrister's duties under CD2 and CD7 were subject to his duty not to mislead, which some argued via CD3 and a good number of others via CD1. The duty of independence was noted to some extent in nearly all responses, but this was applied in varying contexts of the scenario and sometimes was only referred to among a list of relevant core duties without stating how CD4 specifically applied to the facts. Where CD4 wasn't referred to specifically it was often possible to still credit the identification of the

principle given candidates' general understanding demonstrated through the course of the answer eg where they had discussed rC20.

Better candidates went on to identify that in the event of withdrawal being required, the barrister would need to inform the client of his reasons for doing so. Many also identified the potential breach of CD5 linked to the CD3 duty. Some of the better candidates also recognised that objectively there was no conflict of interest in this scenario. Of those candidates graded as Poor, the main omission was the failure to recognise the need for the barrister to cease to act if the client insisted on the allegation of fraud being pleaded. Sometimes this was due to the candidate not developing the scenario through to this point (ie they identified that the barrister could not plead the allegation of fraud and so must refuse, but did not then go on to consider the position should the client 'insist') and others because this was omitted wholesale from the answer. In the former responses, often the overall sense in reading the candidates' answers as a whole was that the candidate understood this point but had just not quite got that far in writing their answer. In this respect, many of the former type of response were capable of being saved from being graded as Poor.

Some candidates who did discuss withdrawal did so in the context of rC26 - that the barrister 'may' rather than 'must' withdraw and therefore gave Poor responses.

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	
#	%	#	%	#	%	#	%
56	11%	59	12%	274	55%	108	22%

Broad syllabus areas covered: This scenario required candidates to identify and apply the relevant ethical principles for a barrister who was instructed by a defendant company in a breach of contract case, where a witness in the case has failed to disclose a document which undermined the case (a rota) and has lied or purposely made such significant errors in his witness statement that to rely upon it without correction would mislead the court. The barrister only discovered the rota and the misleading/untrue content on the morning of trial, when the witness told her to "run the case as drafted and forget [he] ever said anything." A satisfactory candidate needed to identify that the barrister owed a duty to the court in the administration of justice not to mislead (CD1) and this overrides her duty to act in the best interests of the client (CD2). The barrister must advise that it is necessary to disclose the prejudicial document namely the rota, and, as the barrister knows the witness statement is untrue, this must be amended to avoid the court being misled. In advising on the implications of the documents and their disclosure she must explain her obligation to withdraw from the case unless her instructions are changed and disclosure permitted. If this is not forthcoming, she must withdraw.

Key observations from Chief Examiner on cohort performance: Performance in this question was mixed. The candidates who performed well identified that the client and the witness were not one and the same and highlighted the need to advise and obtain instructions from the client (CD2) in respect of the witness's evidence rather than from the witness. However, many missed this point and conflated the roles of the witness, who was the operations manager, and the client. It was not necessary, however, to identify this point to receive a satisfactory grade. The two documents (statement and rota) were on occasion addressed together or candidates dealt with one and not the other. Most candidates clearly identified this was a case where the barrister was at risk of misleading the court and discussed the interplay of CD1/CD2 correctly concluding there were issues of disclosure, and the importance of disclosing the rota, and the potential consequences if this was not disclosed. Nearly all candidates identified the confidentiality issues of such disclosure even though this was a "Good" point.

Poorer candidates either failed to deal with part of the question ie the need to withdraw, or to provide an ethical resolution. Candidates often struggled with the issue of the witness statement, and how to deal with its content. Some indicated that disclosure would not be in the client's best interests and missed that the witness statement was already before the court and unless some action was taken the court would be misled. Others suggested they could advise or continue to act in respect of the witness statement and put the plaintiff to proof or continue and not make reference to the documents, effectively following the witness instructions to forget what was said, thus compromising the barrister's independence and integrity. A small number of candidates suggested settlement as a potential solution to avoid the disclosure point ie continuing to act without amending the statement or disclosing the rota.

The 'Unacceptable' grades were mainly due to a failure to recognise when the barrister should withdraw in this scenario, coupled with a lack of knowledge or an incorrect application of the principles of disclosure.

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	
#	%	#	%	#	%	#	%
19	4%	63	13%	287	58%	128	26%

Broad syllabus areas covered: This question required candidates to consider the ethical principles relating to first the cab rank rule, and the duty of a barrister to act with independence when their personal views, opinions, are not aligned with the professional or lay client, and what actions, if any, may be taken. The conclusion on the fact pattern was there were no reasons for the barrister to refuse this brief.

In the scenario the female barrister had a prominent public presence on social media where she expounded her pro-choice views. She also worked with those who were victims of domestic violence and who may have recourse to use

women's health services / abortion clinics. She is instructed to represent a lay client said to have anti-abortion views and who is charged with arson and is alleged to have set fire to a women's sexual health clinic. The instructing solicitor indicates the barrister has been chosen because of her views on abortion, and its effect upon the perception of the client's case. The barrister is worried what others will think about her taking on such a case considering her online presence and views. She considers taking two "wellbeing days" to avoid dealing with the case.

Key observations from Chief Examiner on cohort performance: On the whole candidates coped well with this question. Candidates correctly identified the cab rank rule applied in this case and the barrister had the appropriate experience and expertise to act. They went on to conclude that she could not withhold her services on the grounds that the case was objectionable to her, or that the client's conduct, opinions or beliefs were unacceptable (rC28). Many candidates recognised that she should not discriminate against him and should treat him with courtesy.

The issue regarding the manipulation of her diary and the potential engagement of CD3 or CD5 were generally properly considered and identified. Difficulties arose surrounding the consideration of CD4. This was capable of being argued in two ways: first, her independence from the solicitor's views and pressure such that this should not influence her in taking the brief. Many candidates did not pick up on this point at all. Those who did argued it well. The failure to identify this point did not result in the remaining answer being graded as Poor. However, further engagement of CD4 with regard to the barrister's personal views on the case became a stumbling block. Candidates considered whether her interests, public views, and work at the refuge were such that there was a conflict of interest in this case. Some put it forward as a possible exception, effectively showing their reasoning. Those who concluded without any further consideration or discussion that this was a conflict of interest, and the instructions could be refused made up a significant proportion of the Unacceptable grades, as did those who incorrectly assessed there was a conflict of interest.

Decision of the exam board in relation to question:

No intervention necessary; results for question confirmed and applied to candidates.

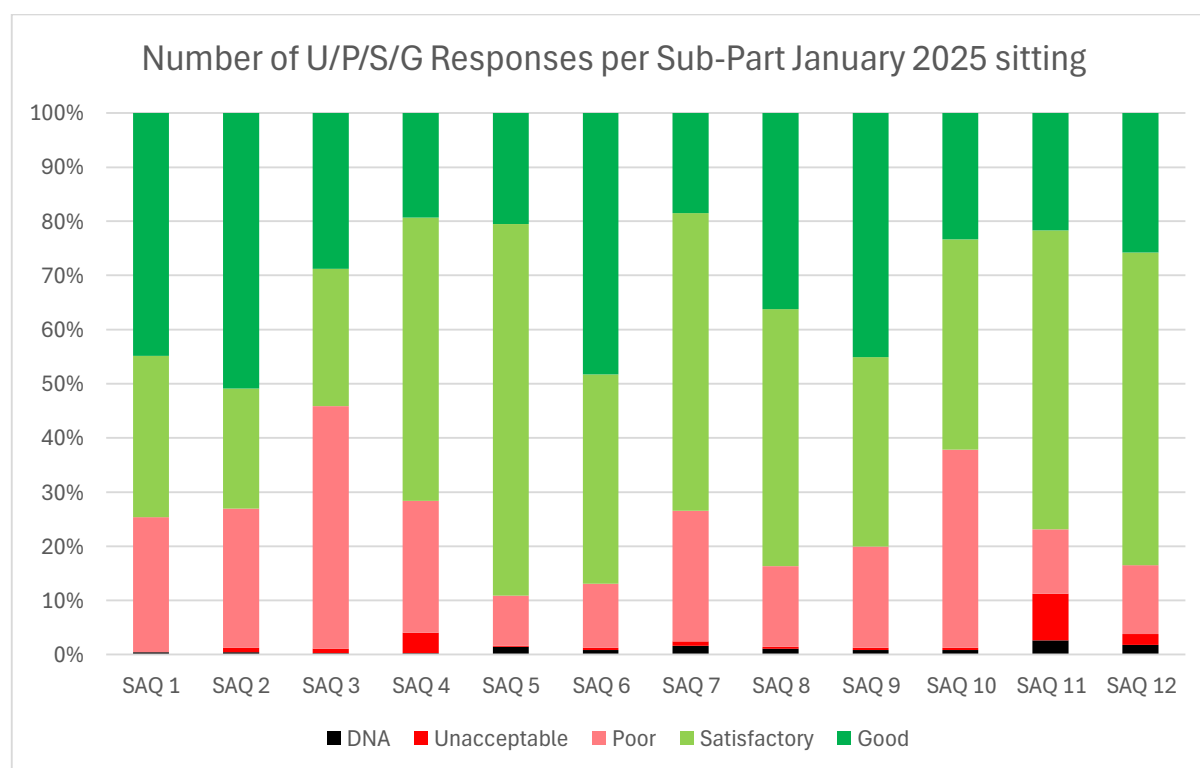
5.7.2 The Exam Board: (i) confirmed that no interventions were required in respect of any of the assessment questions, or cohort results; (ii) that all questions would be included in the assessment for the purposes of compiling candidate results; and (iii) noting that it was a change in the candidates' favour, that Chair's Action could be taken to approve the outcome of the review of scripts following the decision to amend the marking scheme for question 4 (see above).

5.7.3 Taking the 12 question responses across 497 candidates produces 5,964 answers which were graded as follows:

Grading	% of all responses January 2025
Did Not Answer (DNA)	1.0%
Unacceptable	1.6%
Poor	21.7%
Satisfactory	43.8%
Good	31.9%

Across all 12 questions the average competency rate (ie percentage of answers rated either 'Satisfactory' or 'Good') was 75.8%. The overall candidate passing rate for the January 2025 sitting is 90.1% 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.

5.7.4 Distribution of categorisations across questions January 2025 sitting



The graph above shows the distribution of answer categorisations across all 12 questions of the assessment for the January 2025 sitting. Question 3 proved to be the most challenging in terms of the percentage (46%) of responses graded as either 'DNA', 'Unacceptable' or 'Poor'. Whilst, therefore, question 3 recorded only 54% of candidates achieving a 'Satisfactory' or 'Good' grading, questions 5, 6, 9 and 12 each showed more than 80% of candidates being graded as 'Satisfactory' or 'Good'.

- 5.7.5 Assuming candidates attempted the questions in sequence, the data does not 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 average competency rate (ie answers rated either 'Satisfactory' or 'Good') for questions 1 to 4 was 68%, compared with 83% for questions 5 to 8, and 76% for questions 9 to 12.
- 5.7.6 The word count for the January 2025 assessment paper was significantly lower than the average for the preceding 9 sittings (4,021) and reflects efforts by the examining team to respond to concerns raised in candidate feedback regarding the challenge experienced by some candidates in attempting to complete the entire assessment within the time permitted.

Exam Paper	Word Count
Apr-22	3,708
Jul-22	4,318
Oct-22	4,796
Jan-23	4,798
Apr-23	4,059
Jul-23	3,474
Jan-24	3,672
Apr-24	3,595
Jul-24	3,773
Jan-25	3,695
Average	3,989

5.8 Trend data

5.8.1 The Candidate Journey: Cumulative data on candidate outcomes

Candidate Journey										
Examination Date	Apr-22	Jul-22	Oct-22	Jan-23	Apr-23	Jul-23	Jan-24	Apr-24	Jul-24	Jan-25
Single-Assessment Candidate Profiles and Outcomes										
Candidates First Sitting ¹	112	21	7	212	44	34	340	58	43	492
Candidates Resitting	N/A	4	2	1	15	17	4	57	19	5
Total Number of Candidates Sitting	112	25	9	213	59	51	344	115	62	497
First Sit Candidates Deemed 'Competent'	107	19	5	196	33	30	277	49	38	446
Resit Candidates Deemed 'Competent'	N/A	4	2	0	9	15	4	51	18	2
First Sit Candidates Deemed 'Not Competent'	4	2	1	16	10	3	62	9	5	43
Resit Candidates Deemed 'Not Competent'	0	0	0	1	6	2	0	6	1	0
Results Set Aside or Voided ²	1	0	1	0	1	1	1	0	0	6
Single-Assessment Pass Rate	95.5%	92.0%	77.8%	92.0%	71.2%	88.2%	81.7%	87.0%	90.3%	90.1%
Cumulative Outcomes										
Total Number of Unique Candidates to-date	112	132	139	351	394	427	767	824	867	1359
Cumulative Total of Unique Candidates Deemed 'Competent'	107	130	137	333	375	420	701	801	857	1305
Cumulative Total of Candidates Not Yet Deemed 'Competent' ³	5	2	2	18	19	7	66	23	10	54
Cumulative Pass Rate	95.5%	98.5%	98.6%	94.9%	95.2%	98.4%	91.4%	97.2%	98.8%	96.0%
(1) A Candidate may be recorded as a first sitter more than once, if their earlier attempts were deemed invalid, eg due to extenuating circumstances.										
(2) Results may be set aside or voided due to extenuating circumstances or examination misconduct.										
(3) Not all candidates previously deemed "Not Competent" will continue to attempt the assessment.										

The table on the previous page shows that, across the ten sittings to date, 1,359 unique candidates have attempted this exam at least once. 1,305 of these candidates have been deemed 'Competent' with regard to this assessment, giving an overall cumulative passing rate of 96%.

5.8.2 Candidate success rate by reference to number of attempts

	#	%
Unique Candidates	1359	100%
<i>Of which have been deemed competent</i>	1305	96%
<i>Of which remain not yet competent</i>	54	4%
Of candidates who have been deemed 'Competent', those who		
<i>Passed on their first valid attempt</i>	1200	92%
<i>Passed on their second valid attempt</i>	93	7%
<i>Passed on their third valid attempt</i>	11	1%
<i>Passed on their fourth valid attempt</i>	1	0%
<i>Passed on their fifth valid attempt</i>	0	0%
Of candidates which remain 'Not Competent', those who		
<i>Have made one valid attempt</i>	51	94%
<i>Have made two valid attempts</i>	2	4%
<i>Have made three valid attempts</i>	1	2%
<i>Have made four valid attempts</i>	0	0%
<i>Have made five valid attempts</i>	0	0%

Of the 1,359 candidates who have sat this exam, 1,200 have achieved a 'Competent' grading result on their first valid attempt, giving a cumulative first valid sit passing rate of 94%.

121 candidates have made at least one resit attempt, of which 105 have ultimately achieved a 'Competent' result following one or more previous valid attempts, giving a cumulative resit passing rate of 86.8%.

Of the 121 candidates who have resat the exam, 93 (ie 76.9%) achieved a 'Competent' grade on their second valid attempt. Taken alongside the 1200 candidates who were deemed 'Competent' on their first valid attempt, the cumulative passing rate within two attempts (ie within those attempts which are funded by the profession via the PCF) is 95.1%. 12 Candidates have achieved a 'Competent' result on a third or further attempt.

There remain 54 candidates who have attempted the Professional Ethics Exam at least once but have not yet achieved a 'Competent' result.

5.8.3 Trends in Single-Assessment Marks and Results

Sitting	Number of Attempts	Number of 'Competent' Results	% of Attempts Deemed 'Competent'
Apr-22	112	107	95.5%
Jul-22	25	23	92.0%
Oct-22	9	7	77.8%
Jan-23	213	196	92.0%
Apr-23	59	42	71.2%
Jul-23	51	45	88.2%
Jan-24	344	281	81.7%
Apr-24	115	100	87.0%
Jul-24	62	56	90.3%
Jan-25	497	448	90.1%
Cumulative Total to Date	1487	1305	87.8%
Average Single-Assessment Pass Rate			86.6%

The table above shows the number of attempts at each sitting and the number and percentage of those attempts which were 'Competent'. This includes all first sits, resits, and sits set aside or voided. In total, there have been 1,487 attempts at the Professional Ethics Assessment, of which, 1,305 (ie 87.8% of all attempts) have produced a 'Competent' result.

The table below also considers all attempts and shows the total number of individual SAQ responses submitted by candidates at that attempt and the percentage of those responses which were assigned each grade boundary or deemed 'Did Not Attempt' (DNA).

Sitting	Apr-22	Jul-22	Oct-22
Number of SAQ Responses	1344	300	108
% DNA	0.00%	0.67%	2.78%
% Unacceptable	3.20%	4.33%	4.63%
% Poor	12.87%	23.00%	26.85%
% Satisfactory	48.21%	43.00%	49.07%
% Good	35.71%	29.00%	16.67%
Sitting	Jan-23	Apr-23	Jul-23
Number of SAQ Responses	2556	708	612
% DNA	1.02%	2.54%	1.47%
% Unacceptable	1.02%	4.52%	0.98%
% Poor	27.03%	34.46%	19.28%
% Satisfactory	51.49%	44.63%	51.63%
% Good	19.44%	13.84%	26.63%
Sitting	Jan-24	Apr-24	Jul-24
Number of SAQ Responses	4128	1380	744
% DNA	0.65%	0.65%	1.48%
% Unacceptable	5.74%	8.91%	3.36%
% Poor	27.20%	17.93%	18.68%
% Satisfactory	45.78%	43.04%	51.34%
% Good	20.62%	29.49%	25.13%
Sitting	Jan-25		Cumulative
Number of SAQ Responses	5964		17844
% DNA	1.01%		0.92%
% Unacceptable	1.56%		3.38%
% Poor	21.66%		23.12%
% Satisfactory	43.83%		46.28%
% Good	31.94%		26.30%

Of the 17,844 individual responses submitted across all sittings to date, the cumulative 'competency rate' (ie proportion of answers rated either 'Satisfactory' or 'Good') is 72.6%. The April 2022 cohort was arguably the strongest so far, achieving a competency rate of 84%, compared to 58% for the April 2023 cohort, arguably the

weakest so far (with the highest percentage of answers graded 'poor' to date). The January 2025 cohort achieved a 'competency rate' of 76%, which was slightly above the cumulative competency rate, and 3% ahead of the previous sitting's competency rate.

5.9 Approval of Exam Board outcomes

- 5.9.1 The Chief Examiner confirmed that she was content that all standard setting, marking, and review processes were followed satisfactorily and, subject to the agreed review of candidate scripts impacted by the Exam Board's decision to remove item U2 from the mark scheme for questions 4 (see 5.7.1 Q.4 above) there was nothing to cause concern about any of these individual stages following the sitting of the January 2025 Professional Ethics Assessment.
- 5.9.2 The Independent Psychometrician endorsed the decisions taken by the Exam Board and felt that the outcomes were reassuring.
- 5.9.3 The Independent Observer confirmed to the Exam Board that he was entirely happy with the way the board had considered the operation of the assessment, and the decisions made.
- 5.9.4 On behalf of the Director General and the Director of Standards, the Head of Examinations 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 2025 SITTING

Results for the January 2025 sitting of the pupillage stage Professional Ethics examination are as follows.

January 2025	
Number of Candidates	497
Number Passing	448
Passing Rate (%)	90.1%

6.1 Analysis of cohort performance

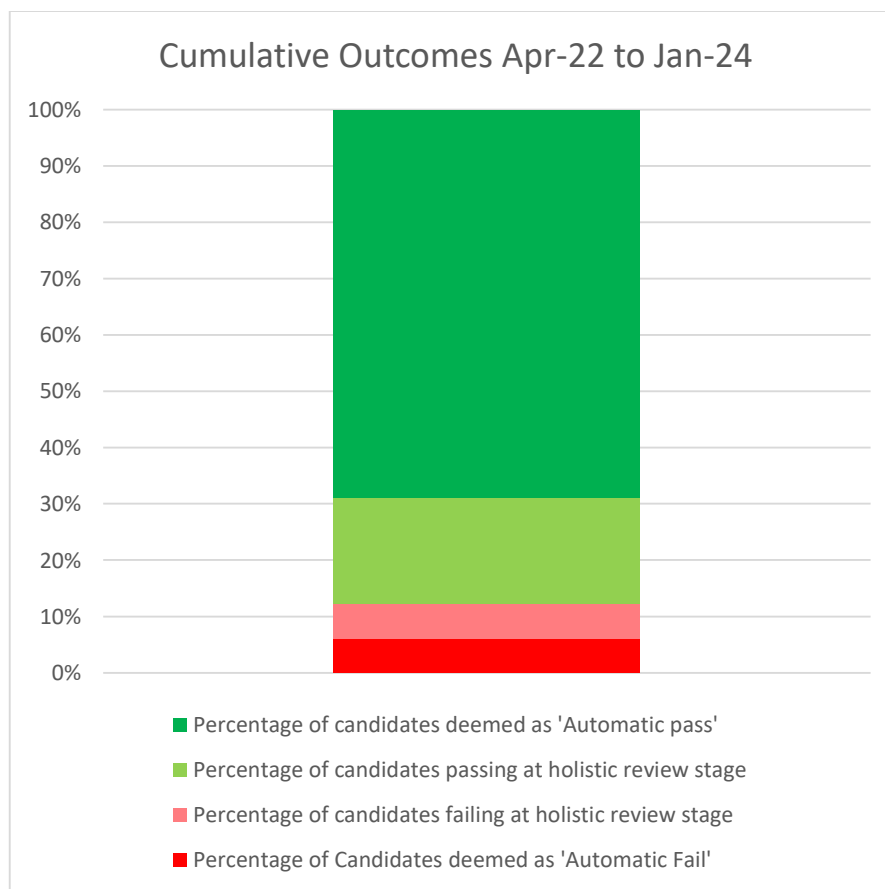
- 6.1.1 Based on the marking protocols relating to candidates automatically graded as 'Competent' and those candidates whose overall examination performance is referred for a holistic review (see further 4.3.3, above) 78.7% of January 2025 candidates were deemed to be automatic passes, and a further 11.5% of all candidates were deemed to have passed following a holistic review of their scripts.
- 6.1.2 The following tables provide an analysis of each cohort at each sitting to date by reference to the operation of the rules relating to automatic passes, automatic fails, and holistic review:

Exam Sitting	Apr-22	Jul-22	Oct-22
Total number of candidates	112	25	9
Percentage of candidates subject to holistic review	15.2%	40.0%	44.4%
Percentage of Candidates deemed as 'Automatic Fail'	1.8%	4.0%	22.2%
Percentage of candidates failing at holistic review	2.7%	4.0%	0.0%
Percentage of candidates passing at hoistic review stage	12.5%	36.0%	44.4%
Percentage of candidates deemed as 'Automatic pass'	83.0%	56.0%	33.3%

Exam Sitting	Jan-23	Apr-23	Jul-23
Total number of candidates	213	59	51
Percentage of candidates subject to holistic review	41.3%	59.3%	15.7%
Percentage of Candidates deemed as 'Automatic Fail'	5.2%	15.3%	3.9%
Percentage of candidates failing at holistic review	2.8%	13.6%	5.9%
Percentage of candidates passing at holistic review stage	38.5%	45.8%	9.8%
Percentage of candidates deemed as 'Automatic pass'	53.5%	25.4%	80.4%

Exam Sitting	Jan-24	Apr-24	Jul-24
Total number of candidates	344	115	62
Percentage of candidates subject to holistic review	28.8%	15.7%	11.3%
Percentage of Candidates deemed as 'Automatic Fail'	8.7%	9.6%	3.2%
Percentage of candidates failing at holistic review	9.6%	3.5%	6.5%
Percentage of candidates passing at holistic review stage	19.2%	12.2%	4.8%
Percentage of candidates deemed as 'Automatic pass'	62.5%	74.8%	85.5%

Exam Sitting	Jan-25		Cumulative
Total number of candidates	497		1487
Percentage of candidates subject to holistic review	17.5%		25.1%
Percentage of Candidates deemed as 'Automatic Fail'	3.8%		6.0%
Percentage of candidates failing at holistic review	6.0%		6.2%
Percentage of candidates passing at holistic review stage	11.5%		18.9%
Percentage of candidates deemed as 'Automatic pass'	78.7%		68.9%



6.1.3 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.

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

Number of Passing Candidates With	
5 Satisfactory/Good Responses	1
6 Satisfactory/Good Responses	18
7 Satisfactory/Good Responses	38
8 Satisfactory/Good Responses	63
9 Satisfactory/Good Responses	81
10 Satisfactory/Good Responses	89
11 Satisfactory/Good Responses	101
12 Satisfactory/Good Responses	57

Number of Failing Candidates With	
3 Unacceptable/Poor Responses	0
4 Unacceptable/Poor Responses	0
5 Unacceptable/Poor Responses	4
6 Unacceptable/Poor Responses	10
7 Unacceptable/Poor Responses	19
8 Unacceptable/Poor Responses	6
9 Unacceptable/Poor Responses	2
10 Unacceptable/Poor Responses	3
11 Unacceptable/Poor Responses	3
12 Unacceptable/Poor Responses	2

6.1.5 The table below illustrates the operation of the grading and holistic review processes (outlined at 4.3.3 above) in respect of the January 2025 cohort.

Profiles January 2025 Sitting	Unacceptable	Poor	Satisfactory	Good
Strongest Profile - candidate automatically failing with 3 or more "Unacceptable" gradings	4	2	2	4
Strongest Profile -- candidate automatically failing with 4 or fewer "Good" or "Satisfactory" gradings	0	8	4	0
Strongest profile -- candidate failing following holistic review	0	5	4	3
Weakest profile - candidate passing following holistic review	2	3	7	0

6.1.6 In respect of the candidates being considered in the holistic review process, it should be borne in mind that the determination of a "Competent" or "Not Competent" grading is not driven by a simple mathematical formula but ultimately rests on the overall view of the quality of the script taken by the examiners. Hence, as the above table shows, the weakest candidate passing as a result of the holistic review process only had one answer graded as "Good" but had 5 answers graded as "Satisfactory". By contrast, the strongest candidate failing following holistic review had 4 answers graded as "Good", but only one answer graded as "Satisfactory". Both candidates had identical "Unacceptable/Poor" scores. A consideration for reviewers will be the nature and seriousness of the defect contained in an answer, for example whether an answer is graded "Unacceptable" on the grounds of what the candidate has failed to address, or on the basis of what the candidate has (wrongly) asserted to be the correct ethical position.

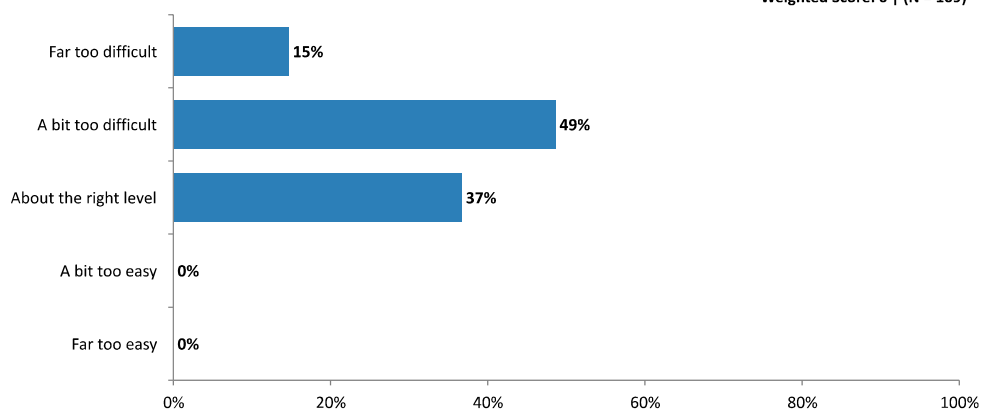
6.2 Feedback from candidates

6.2.1 The Examinations Manager reported that feedback was solicited from all candidates via a survey immediately following the exam, with reminders sent a week later. 110 candidates (22%) responded to the feedback survey.

6.2.2 A summary of the general feedback: Level of difficulty

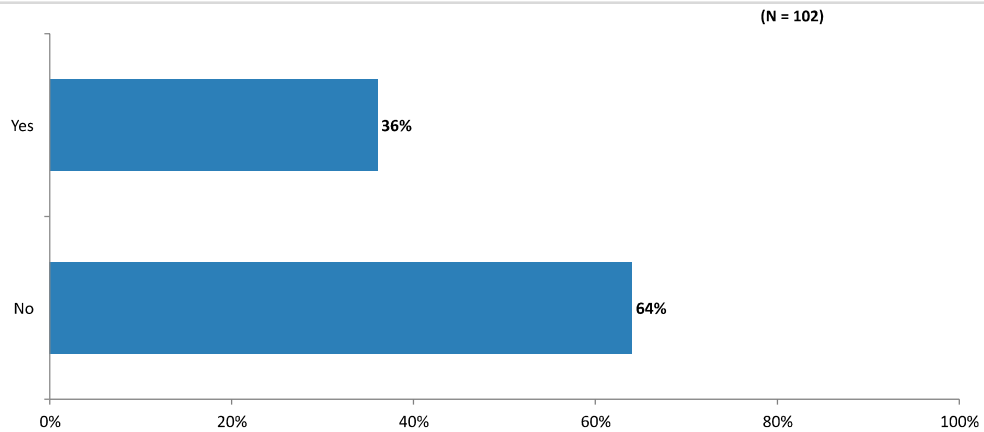
What was your impression of the overall difficulty level of the paper for a barrister at this level of training?

Weighted Score: 0 | (N = 109)



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

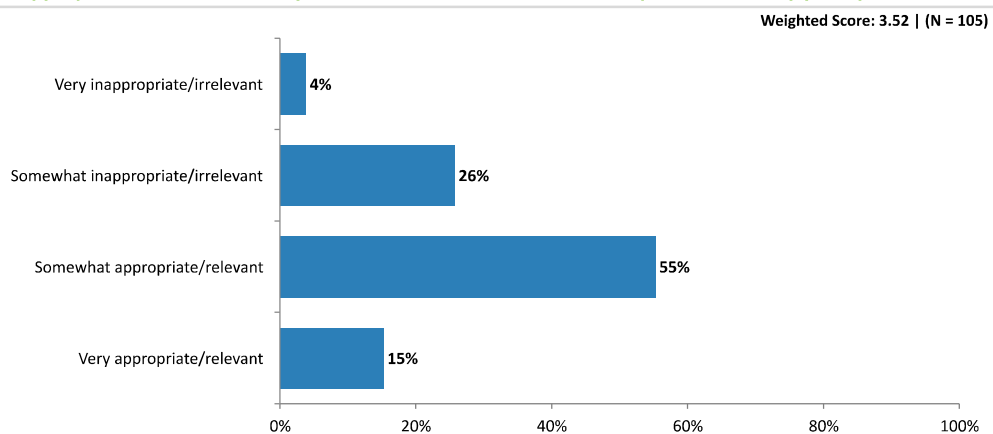
Did you leave any answers blank or incomplete due to insufficient time?



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6.2.4 A summary of the general feedback: Relevance of scenarios

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



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6.2.5 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:

	Apr-22	Jul-22	Oct-22	Jan-23	Apr-23
No. Responding	N/A	3	3	73	12
% of candidates responding	N/A	12%	33.33%	34.27%	20.34%
% 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%
% of respondents self-reporting as leaving answers blank due to lack of time	N/A	0%	33%	55%	91%
% of respondents confirming that the question scenarios were somewhat appropriate/relevant of very appropriate/relevant to the expertise of early years practitioners	N/A	100%	33%	57%	41%
Passing rate for this sit	95.50%	92%	77.80%	92%	71.20%
	Jul-23	Jan-24	Apr-24	Jul-24	Jan-25
No. Responding	12	88	19	16	110
% of candidates responding	23.53%	25.58%	16.52%	25.81%	22.13%
% of respondents confirming that the difficulty level of the paper as a whole was appropriate for a barrister at this level of training.	50%	17%	37%	31%	37%
% of respondents self-reporting as leaving answers blank due to lack of time	25%	45%	50%	31%	36%
% of respondents confirming that the question scenarios were somewhat appropriate/relevant of very appropriate/relevant to the expertise of early years practitioners	83%	64%	69%	84%	70%
Passing rate for this sit	90.20%	81.70%	87%	90.30%	90.1%

Feedback on the January 2025 sitting compared to the average of feedback across all 10 sittings to date indicates that the January 2025 candidates:

- (i) perceived the paper to be slightly more challenging than average;
- (ii) expressed a level of concern about sufficiency of time to complete the assessment very much in line with previous sittings; and
- (iii) gave the assessment a higher than average approval rating in terms of the relevance of scenarios in the context of the early years of practice

Professor Mike Molan
Chair of the CEB
18 April 2025

Appendix 1

General Descriptors

Grade	Descriptor
Good = "More than Competent"	Content exceeds the criteria for a Satisfactory answer ie, "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 (eg, 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>