

**BAR
STANDARDS
BOARD**

REGULATING BARRISTERS

**THE BAR STANDARDS BOARD
CENTRAL EXAMINATIONS BOARD
CHAIR'S REPORT
PART 1**

**Bar Training, BTT, BPTC & BTR
All Sittings**

This report should be read in conjunction with Part 2 of the Chair's report for a particular sitting

1. BACKGROUND AND CONTEXT

1.1 Why the Central Examinations Board ('CEB') was established

The 2010/11 academic year saw the first round of assessments under the BPTC regime in the wake of the Wood Report (July 2008). Centralising the Professional Ethics, Civil Litigation and Criminal Litigation assessments was a key recommendation of the Wood Report, and the CEB was established to oversee this change on behalf of the Bar Standards Board ('BSB'). 2011/12 was the first year of operation for the system of centralised examinations on the BPTC, with assessments compiled by a team of CEB examiners appointed by the BSB.

1.2 Future Bar Training

- 1.2.1 As part of the Future Bar Training reforms a new vocational training component, Bar Training, was introduced to replace the BPTC for the start of the 2020/21 academic year. Centralised assessment of Professional Ethics is now undertaken as part of the pupillage training requirements. Tuition in Criminal Litigation and Civil Litigation (including dispute resolution) continues to be delivered by course providers, now referred to as AETOs, with the assessments set by the BSB.
- 1.2.2 The Criminal Litigation assessment takes the form of a closed book three-hour paper comprising 75 multiple-choice questions (MCQs) and single best answer questions (SBAs). Civil Litigation is assessed across two papers (Civil 1 and Civil 2). Civil paper 1 takes the form of a closed book two-hour paper comprised of 50 MCQ and SBA questions. For Civil paper 2, candidates have two and a half hours to attempt 40 questions, the first five are stand-alone MCQ and/or SBA questions, and the remaining 35 take the form of rolling case scenarios – each with seven questions that track a developing narrative. Candidates are permitted access to the White Book for reference during Civil paper 2. Candidates attempting the Civil Litigation assessment simply need to achieve a pass mark across the 90 questions. There is no requirement to achieve a minimum number of marks on either paper 1 or paper 2.
- 1.2.3 Candidates have three opportunities a year to attempt the centralised Bar Training Course examinations: December ('Winter sit'), April ('Spring sit'), and August ('Summer sit').

- 1.2.4 AETOs must meet the requirements of the Authorisation Framework; in doing so, they may structure their Bar Training courses in various ways. Some will offer a traditional integrated programme where all subjects are studied in parallel. Full time candidates commencing such courses in September may be attempting the centralised assessments for the first time in either the December or April sittings, depending on the assessment strategy adopted. Others may (alternatively, or additionally) offer a 'Part 1-Part 2' structured programme whereby candidates prepare for the centralised assessments in Part 1 before progressing to the examinations in the skills areas in Part 2. In such cases candidates commencing in September would normally be expected to attempt the centralised assessments for the first time in the December sit immediately following.
- 1.2.5 Some AETOs may offer multiple entry points across the academic year and may permit entry with advanced standing (for example the transfer in of candidates who have successfully completed 'Part 1' of the Bar Training course at another AETO). Hence, a candidate commencing a course in April may attempt the centralised assessments for the first time in the August sit. Additionally, an AETO offering a 'Part 1-Part 2' structured programme may offer preparation for 'Part 1' online-only. Current details of the range of provision across AETOs can be found here:

<https://www.barstandardsboard.org.uk/training-qualification/becoming-a-barrister/vocational-component/aetos-from-2020.html>

2. BAR TRAINING COURSE CENTRALISED ASSESSMENT PROCEDURES

The assessment process is overseen by the CEB whose members are appointed by the BSB. The CEB comprises a Chair, teams of examiners (a Chief Examiner and a number of Assistant Chief Examiners for each subject). The CEB is supported by an independent observer, an independent psychometrician and senior staff from the BSB. The Chair and the examiners contribute a mix of both academic and practitioner experience.

2.1 How examination papers are devised and approved

- 2.1.1 The bank of material used for compiling the centralised assessments is derived from a number of sources including questions devised by specialist question writers commissioned by the BSB (some of whom are based at AETO institutions), and questions devised by members of the central examining teams.
- 2.1.2 Draft assessment papers are compiled by the relevant CEB examiner teams, under the guidance of the Chief Examiner for each centrally assessed knowledge area. A series of paper confirmation meetings are held, attended by the relevant team of examiners, the Chair of the CEB, and key BSB support staff. These meetings consider the suitability of each question and the proposed answer, with particular emphasis on balance of subject matter, syllabus coverage, currency of material, clarity and coherence of material, and

level of challenge. If a question has been used previously, consideration is also given to the statistics regarding the question's prior performance. In addition, the draft papers are reviewed by the BSB's syllabus team to ensure that all questions comply with the current curriculum. Any recommendations made during this process by the BSB's syllabus team are passed on to the Chief Examiner who will determine any changes to be made to the draft paper. The draft paper is then stress tested under the equivalent of exam conditions, and the outcomes used to inform further review by the relevant Chief Examiner. Finally, a proof-reader checks each exam paper for compliance with house style, grammatical accuracy, typographical errors, and ease of reading.

2.2 Standard setting

Before candidates attempt the examinations for Civil Litigation and Criminal Litigation the papers are subjected to a standard setting process to determine a passing standard which will be recommended to the Final Examination Board. The method used for these two subjects is known as the Angoff Method, and it helps ensure that the standard required to achieve a pass mark is consistent from one sitting of the assessment to the next. Using standard setting, the number of MCQs a candidate needs to answer correctly to pass the assessment may go up or down from one sitting to the next depending on the level of challenge presented by the exam paper as determined by the standard setters. For a more detailed explanation of this process see: <https://www.barstandardsboard.org.uk/uploads/assets/514638a6-383c-40b2-8fc2dd8b2fe83585/20220819-Standard-setting.pdf>

2.3 How the exams are conducted

- 2.3.1 Candidates across all AETO institutions normally attempt the centralised assessments in each of the knowledge areas on the same dates. In any case where an AETO identifies candidates as having reasonable or other adjustments arrangements necessitating a start time earlier than that of the main cohort, appropriate measures are put in place (including the use of non-disclosure agreements) to ensure the integrity of the assessments. Secure delivery and collection arrangements are put in place for all examination materials.
- 2.3.2 Candidates are allowed to attempt the assessments at locations overseas. The onus is placed on the candidates' AETO to ensure that a secure assessment centre is available, and the BSB normally requires the start time of the examination at the overseas centre to be the same as the UK start time (an earlier/later start time may be permitted provided there is an overlap and candidates are quarantined). To ensure the complete security of the examination papers, the BSB dispatches all examinations to the overseas contacts directly.
- 2.3.3 AETO institutions are given guidance on examination arrangements by the BSB. Exam invigilation reports for exams (listing for example, public transport strikes, bomb alerts, fire alarms, building noise), are submitted by AETOs, detailing any issues they believe may have had a material bearing on the

conduct of the examination itself at their assessment centres and, if required, these reports are considered at the CEB Subject and Final Exam Boards.

- 2.3.4 Each AETO oversees its own "fit to sit" policy. Some AETOs require candidates to complete a "fit to sit" form at the time of an exam. Other AETOs will complete this process at enrolment, candidates confirming that if they are present at the time of the exam, they are fit to sit the exam.

2.4 Marking

- 2.4.1 Candidates attempting the Civil Litigation and Criminal Litigation assessments record their answers on machine-readable answer sheets. AETOs return the original answer sheets to the BSB for machine marking. The answer sheet scanning is undertaken by specially trained BSB support staff, using specialist scanners and software. The scanner removes the risk of wrongly capturing marks which may occur with human input. This process enables accurate production of data statistics and results analysis for consideration at the exam boards. Once scripts are uploaded, the BSB staff compare the scripts received with the exam attendance lists supplied by AETOs to ensure all the expected scripts have been received. Where there is an expected script which is not received, or a script received which was not expected, this is queried with the AETO.

2.5 Examination Boards

- 2.5.1 The CEB operates a two-tier Examination Board process. A first-tier Subject Board is convened for each of the knowledge areas attended by all members of the examining team and the Independent Observer. The recommendations from each of these first-tier Boards are then fed into an over-arching Final Examination Board where the recommendations are considered and a final decision on cohort performance in each of the centralised assessment knowledge areas is arrived at.
- 2.5.2 Prior to the meeting of the Subject Board the examining teams receive copies of AETO feedback on each of the assessment items. The examining teams formulate their draft responses to this feedback indicating whether or not they think the points raised by the AETOs appear to warrant further investigation at the Subject Board. The examining teams consider the AETO feedback without any knowledge of the statistical data relating to the operation of each assessment item to ensure an objective approach to the feedback and the need for further investigation.

2.5.3 The meeting of the Subject Board considers, with the advice of the independent observer, the outcome of the standard setting process and whether there are any grounds to question the reliability of the assessment, or whether there are any other factors that might lead the Subject Board to recommend a different passing standard. The Subject Board then comes to a preliminary conclusion regarding the pass standard to be recommended to the Final Board. The Subject Board then considers the results for each assessment item. The key data presented to the Subject Board (reflecting the recommended passing standard) will also include:

- data showing the pass rate for each MCQ cross-referenced to the representations made in the feedback pro-formas returned by the AETOs – thus flagging up any correlation of AETO criticisms and concerns with systemic poor performance by candidates.
- statistical analysis produced by the BSB Exams Team and endorsed by the psychometrician, including facility values, point biserials, and a measure of discrimination for each distractor, as well as an estimate of reliability for the assessment as a whole.
- the Chief Examiner's commentary on the assessment process.
- feedback on the examination questions and the examination paper as a whole provided by the AETOs.
- a report from the Chair of the relevant standard setting meeting.
- invigilator reports detailing evidence of issues that may have impacted on the conduct of the examination itself at any AETO centre.

2.5.4 On the basis of the above evidence, and as informed by the Independent Observer's views, the Subject Boards have the discretion to intervene where there is evidence that a particular element of an assessment has not operated effectively. Options typically include:

- crediting more than one answer to an MCQ as correct.
- disregarding an MCQ entirely if deemed defective or inappropriate (eg no correct answer) – no candidate is credited, and the maximum score is recalculated.
- crediting all candidates with the correct answer if an MCQ is deemed defective or inappropriate.
- scaling overall marks for an assessment, or for a sub-cohort due to local assessment issues (provided the sub-cohort constitutes a statistically reliable sample for scaling purposes).

2.5.5 Once the Subject Board has considered the pass standard and agreed any necessary interventions it is notified of the resulting pass rate for the cohort of candidates as a whole. The Subject Board has the discretion to reconsider its decision in relation to the pass standard in the light of this data if there are principled grounds for so doing, before arriving at a definitive recommended pass standard to put forward to the Final Board.

- 2.5.6 In confirming marks for cohorts of candidates the CEB is concerned to ensure that a consistent measure of achievement has been applied across all AETOs, and that proper account has been taken of any relevant factors that may have had a bearing on the performance of a cohort of candidates. As a result, the CEB has the discretion to scale cohort marks (upwards or downwards) if it feels there are issues relating to all candidates, or a statistically relevant sub-cohort of candidates, that justify such intervention. The CEB will not use this discretion to intervene in respect of issues arising from the delivery of the course by an AETO or matters related to the conduct of the assessment that can be dealt with through an AETO's extenuation processes.
- 2.5.7 The Final Examination Board considers the recommendations of the Subject Boards in respect of the AETO cohort performances in each of the knowledge areas. The Final Board's members include the Chair of the CEB, the relevant Chief Examiners, and either the BSB's Director General, or the BSB's Director of Regulatory Standards. The meeting is also attended by an independent psychometrician and an independent observer who provide advice and oversight, and BSB staff serving in an administrative role. The function of the Final Examination Board is to test the recommendations of the Subject Boards and to confirm the MCQ cohort marks subject to any outstanding quality assurance issues. Prior to confirmation of results by the Final Board, the expression 'pass rates' should be understood as being used in a qualified sense. Candidates cannot be categorically referred to as 'passing' or 'failing' until the Final Board has agreed the passing standard to be applied in respect of an assessment and any proposed interventions, whether in respect of individual items or generic scaling. Once cohort marks are confirmed by the CEB they cannot subsequently be altered by AETO institutions — although AETOs may cap passing results as 60% for resitting candidates or set aside results due to extenuating circumstances or academic misconduct. The process for challenging marks confirmed by the CEB is outlined on our website: <https://www.barstandardsboard.org.uk/uploads/assets/bb0267a5-d71f-4f37-8bae534100dd7290/Regulations-Governing-Student-Review.pdf>

2.6 Reporting results to AETOs

- 2.6.1 Once the CEB has confirmed the centralised assessment marks for each cohort of candidates at each AETO, the marks are distributed to the AETOs where they feed into their individual candidate profiles considered at the AETO Examination Boards. The actual scores achieved by candidates need to be aligned with the 60% pass mark used by AETOs for their own postgraduate award, where applicable. Hence if, for example, the passing standard for Criminal Litigation is 43/75 (in effect 57%), a candidate achieving 43/75 will be reported as having a score of 60% (the pass mark). All other candidate scores will be translated accordingly depending on the passing standard adopted.
- 2.6.2 It is at the AETO Examination Boards that issues relating to individual candidates such as extenuating circumstances or academic misconduct are considered.

3. EXECUTIVE SUMMARY

The Bar Training course is the successor to the Bar Professional Training Course ('BPTC') as the vocational training component to be successfully completed prior to call to the Bar. The Bar Training Course saw its first intake of students at nine Authorised Education and Training Organisations (AETOs) in September 2020. Depending on the course structure offered at each AETO, candidates will have had their first opportunity to attempt the centralised assessments in Civil and Criminal Litigation in December 2020.

3.1.1 When reviewing the data contained in the Chair's reports - and particularly when comparing the performance of AETO cohorts across a sitting and trend data showing performance over time - the following contextualisation should be considered:

- Candidate volumes at AETO centres can vary hugely from one sitting to the next, resulting in a high degree of volatility in the data.
- AETO cohorts may comprise a mixture of first-sit candidates who have never attempted the assessment before; first-sit candidates so designated because a previous attempt has been discounted (for example because of extenuating circumstances); and referred candidates who are attempting the examination for a second, or possibly a third or subsequent time, because of previous failure.
- An AETO with a consistently lower pass rate is likely to have far more repeating candidates than an AETO with a consistently higher pass rate.
- AETO cohorts within which candidates are given more resit opportunities will tend to have a wider gap between the percentage of candidates who ultimately pass the assessments and the average single-examination pass rate.
- A candidate who fails an assessment will not necessarily attempt it at the next opportunity.
- Whereas under the previous BPTC examinations it was reasonably safe to assume that, for the Spring sit, the vast majority of candidates were sitting for the first time, and that the majority of those attempting the Summer sit were referred or deferred candidates (hence enabling year on year comparison of Spring or Summer sit results) no such certainty exists in relation to the make-up of the cohorts attempting the Spring, Summer or Winter sits of the centralised examinations for the Bar Training course.
- Some of the historic data on candidate numbers and pass rates differ in this Chair's Report from that presented in previous Chair's Reports. This is because previous Chair's Reports utilised data presented at the Final Exam Board, which excluded a small number of candidates from the analysis where they were extreme outliers (such as those who only answered one or two questions). In this report, candidate numbers and pass rates are based on the results as sent back to AETOs after the Final Board. The differences are larger in Civil Litigation, as some candidates sit only one paper of the two papers comprising that assessment, and these candidates are always excluded from analysis at the Final Board. This change is simply to ensure

consistency in reporting and has no bearing on previous exam board decisions or Chair's Report commentary.

4. EXAM BOARD DECISIONS IN RELATION TO SELECTED QUESTIONS

- 4.1 The CEB invited AETOs to provide feedback on both the Criminal Litigation and Civil Litigation examination papers as a whole and on each question if there were issues that the AETO wished to bring to the attention of the Exam Board before it proceeded to confirm the results. Typically, responses from AETOs raised issues such as the possibility of there being more than one 'best' answer; the link between the question asked and the syllabus reading material; syllabus coverage; the level of challenge offered by the question; and whether the question was fair to ask candidates at this stage in their training. Along with the statistical data available to the Exam Board (see 2.5.3 above), the feedback from the AETOs can be of material assistance to the Exam Board in determining whether or not any intervention is required in respect of any individual question.
- 4.2 The examining team is first asked to reflect on the AETO feedback without having sight of any of the statistical data revealing how candidates have performed in respect of a particular question. This enables the examining team to focus on the substantive points raised by the AETOs (in particular, questions of substantive law and procedure) without being influenced by evidence of actual cohort performance. Independently of this, the psychometric data on cohort performance is analysed and a report on any apparent anomalies in terms of passing rates for individual questions, poor correlation, and low discrimination is produced which the examining team reviews following their response to the AETO feedback. During the exam board both AETO feedback and psychometric data are discussed together, and an independent psychometrician advises the examining team on any matters relating to the data.
- 4.3 Discrimination refers to the extent to which candidates, who performed well in the examination as a whole, answered a specific question correctly, and the extent to which candidates who were weak overall answered the same specific question incorrectly. Where the statistical analysis shows poor discrimination, it can be evidence that candidates had to resort to guessing which answer was correct, suggesting that the question had not operated as expected. It is also the case that where the passing rate for an item is very high, the discrimination score can be low, simply because the vast majority of candidates (both weak overall and strong overall) will have answered the question correctly. Correlation is a similar measure. The Board expects to see a positive correlation figure in respect of the correct or intended best answer for any given question, and a negative correlation score in relation to a wrong, or 'not the best' answer. A positive correlation outcome for a wrong or 'not the best' answer suggests that the stronger candidates (in terms of performance across the examination as a whole) were attracted to that answer.

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