

**Bar Professional Training Course Examination**

**Professional Ethics sample questions**

Note: This paper relates to the current BPTC Professional Ethics exam and not to the new WBL examination as proposed.

**Professional Ethics**

Composition of papers and division of time

1. This exam comprises six Short Answer Questions (SAQs).

2. You will have two and a half hours to complete the exam.

3. Please use a new page of the SAQ answer book for each of the SAQ sub‑questions.

**Materials**

1. You **MUST NOT** remove from the examination centre the exam paper or the SAQ answer book.

2. You are **NOT** allowed to use any materials other than writing materials and an eraser.

SAQ marking scheme

1. Each of the six SAQs is divided into two sub-parts. The number of marks indicated for each sub-part is the maximum that may be awarded and marks are not transferable between sub-parts.
2. There is no restriction, other than the time available for the test, on how many points you are permitted to give for each sub-part of a question. You should aim to provide a comprehensive answer to the question and not limit yourself to make the same number of points as the marks available.
3. In answering SAQs, you will not be required to quote the relevant paragraph number(s) in the Handbook or other source material. However, you are expected to quote accurately the Core Duties that are applicable in any sub-part of a question. This exam is intended as a test of your ability to identify the ethical issues engaged in the questions and then to apply your knowledge of Professional Ethics in seeking to resolve those issues.
4. The close application of ethical principles to the facts outlined in each scenario is the key to success in this exam. In order to obtain high or full marks you are advised to write coherently so as to evidence fully your knowledge and understanding of the issues involved and your evaluation of the correct ethical approach to adopt in the circumstances. Markers are looking for answers that clearly demonstrate a full appreciation of the Core Duties and ethical issues involved. Therefore, answers should provide a detailed description of these as well as a comprehensive and clearly reasoned explanation in support of the resolution proposed. A statement of principle without the demonstration that its application has been properly understood will not attract marks. Bullet-point answers are acceptable but they must be coherent.
5. Markers are instructed as follows:
   * Not to award marks for ambiguous or mutually exclusive answers or answers that fail to demonstrate the correct application of ethical principles.
   * Not to award marks for an SAQ answer they deem to be inadequately coherent prose at sentence level.
   * Not to piece together a coherent answer from incoherent fragments of information distributed throughout an answer.
   * Not to award marks where an SAQ answer has been deemed illegible by the Central Examinations Board (CEB).

QUESTION 1

Peter is a self-employed barrister who has been instructed to represent Frank Smith in an allegation of GBH with intent. Frank is of good character and has learning difficulties. Frank is jointly charged with his father, Gordon, who is representing himself in the proceedings. The Prosecution allege that, during an altercation, one of them threw a glass at a barman in a nightclub, causing a facial injury requiring 28 stitches. No other person was involved. In their police interviews, both Frank and Gordon denied that they threw the glass. Peter attends the PTPH. His instructing solicitor is not present in conference when Peter sees Frank, who is accompanied by Gordon. Gordon speaks for Frank and provides instructions on his behalf. The evidence, including CCTV footage, appears very strong against Frank, but, despite this, Peter advises him that he has a good case and is likely to be acquitted at trial. He advises Frank that he should enter a not guilty plea, which Frank does. On the day of trial, Peter changes his advice, telling Frank that he should plead guilty because the evidence is overwhelming. Frank is re-arraigned and pleads guilty to the charge. He is very upset by the Judge’s comment that he will receive little credit for pleading guilty on the day of trial. The matter is adjourned so that a pre-sentence report can be prepared by the Probation Service.

(a) Identifying the relevant ethical principles and applying them to the facts, explain what Peter has done wrong in terms of the conference, his advice to Frank and his professional conduct generally. **(6 marks)**

The matter is listed for sentence. Peter has been very busy prosecuting a serious allegation in a different Crown Court and, on the day of Frank’s sentencing hearing, he realises that he forgot to advise his instructing solicitor to obtain evidence regarding Frank’s learning difficulty. Nevertheless, Peter decides not to seek an adjournment of the hearing. Following Peter’s mitigation, Frank receives a long custodial sentence. Frank’s mother, who attended the sentencing hearing, is distraught and with Frank’s agreement, she subsequently makes a complaint to the Bar Standards Board (“BSB”). The BSB’s professional conduct department writes to Peter, requiring a written response from him to the complaint within 7 days, along with any notes of conferences with Frank. Peter’s notes were sketchy and indecipherable by anyone other than him, due to the handwriting. Peter receives the BSB’s letter on his last working day before a three-week holiday period. He puts the letter on the top of his ‘to do’ pile on his return.

(b) Identifying the relevant ethical principles and applying them to the facts, explain what errors Peter has made and what he should have done, both in respect of the sentencing hearing and the Bar Standards Board **(4 marks)**

**Mark scheme for question 1(a)**

1. Peter should not have held a conference with both his client and co-Defendant **[½ mark]** as he owes a duty of confidentiality to his client (CD6) **[½ mark]** and in this case there appears to be a conflict of interest, since the prosecution case is that it was either Frank or Gordon who threw the bottle **[½ mark]**
2. Peter has not acted in Frank’s best interests (CD2) **[½ mark]** in allowing Gordon to speak/give instructions on Frank’s behalf (CD2) **[½ mark]**
3. Peter should have held the conference in the presence of another responsible / appropriate adult (other than the solicitor) **[½ mark]** as he has a duty to ensure that the interests of vulnerable clients are taken into account and their needs are met **[½ mark]**
4. Peter also has a duty to ensure that he advises Frank in language/terms that he can understand, (gC38) **[½ mark]**
5. Frank may not be familiar with legal proceedings / might find them stressful(gC41) **[½ mark],** particularly given the seriousness of the allegation / formality of the proceedings **[½ mark]**
6. Peter should ensure that Frank understands the process **[½ mark]** and should also attempt to avoid any unnecessary distress for Frank. gC41 **[½ mark]**
7. This is particularly important as Frank has a learning difficulty and is therefore vulnerable (gC41) **[½ mark]**
8. Based on these instructions Peter should have advised Frank fully:
   1. regarding the strength of the evidence against him; **[½ mark]**
   2. regarding credit for pleading guilty **[½ mark]**
9. He should not have advised Frank to plead guilty (whilst making it clear that the Prosecution had a strong case against him). **[½ mark]**
10. By failing to advise Frank properly **[½ mark]** Peter is in breach of CD2 and CD7 **[½ mark only for either or both CDs].**

**Mark scheme for question 1(b)**

1. Peter has failed to act in Frank’s best interests (CD2) / failed to provide a competent standard of work and service (CD7) **[½ mark only for either or both]** by failing to advise his instructing solicitor to obtain evidence about Frank’s learning disability. **[½ mark]**
2. Peter should have applied for an adjournment in order to obtain the evidence about Frank’s learning difficulty **[½ mark],** explaining to the court why the evidence had not been obtained specifically the fact that it was his fault **(NB mark available as long as reference is made to Peter accepting responsibility)** **[½ mark]** as he had a duty to act with honesty and integrity (CD3) / to act in the best interests of his client without regard to his own interests or any consequences to himself (rC15.2) **[½ mark only for either CD3 and/or rC15.2]**
3. Peter must be open and co-operate with the BSB. (CD9) **[½ mark]**
4. He must do so within the time specified in the letter **[½ mark]** or he must seek an extension as he is going on leave **[½ mark]**
5. He should provide a written response including the details of his conduct of the case (CD3 and CD9). **[½ mark]** The response will need to be a typed version of his notes, given their illegibility **[½ mark]**
6. Peter should provide all information required by the BSB. (rC64, cC92) **[½ mark]** save that, although he did not take many notes, he will still need the client’s permission if he is to pass on confidential information. (gC93) **[½ mark]**
7. The failure to take proper notes may be a breach of CD10 **[½ mark]** CD2, CD5 and/or CD7 **[½ mark if at least two CDs referenced in context]**

**(Total 10 marks)**

**QUESTION 2**

You are representing a local authority in a prosecution at the Magistrates’ Court for offences relating to health and safety and fly tipping committed by an industrial waste company. The defendant directors personally and on behalf of the company plead guilty and the case is committed to the Crown Court for sentence. You feel much sympathy for the Defendants and believe that the prosecution is somewhat oppressive and probably need not have been brought. Prior to the sentencing hearing, the local authority instructs you to apply for forfeiture of certain goods related to the offences as well as prosecution costs. The schedule of costs sent to you involves a sum that would, to your knowledge, significantly affect the defendant company’s future viability.

There is no representative from the local authority present at the sentencing hearing, which is actually the first time you have appeared in the Crown Court. As a result of being nervous, and quite unintentionally, you forget to apply for either forfeiture or costs during the hearing. You only realise your error after the Judge has pronounced the sentence and you and the other barristers are leaving the courtroom. You are now too embarrassed to raise the issue. Thereafter, you do not contact the local authority after the hearing to inform them of the sentence imposed. In response to an email from them asking about the orders made, you inform them that the forfeiture and costs applications were refused by the Judge.

(a) Identifying all relevant ethical principles and applying them to the facts, explain how you should have dealt with your omission at the hearing and the local authority’s enquiry about the outcome. You must give a detailed explanation supporting your answers. **(5 marks)**

You attend the Magistrates’ Court to represent Miss Charlotte Dickson at her trial for causing actual bodily harm to a ticket inspector who challenged her about travelling on a train without paying. The papers contain a list of her previous convictions, which is purportedly up to date. Although Miss Dickson has convictions for shoplifting, there are no recorded convictions for violence. As a result, you were intending to adduce the previous convictions as a tactic to show that she has no propensity for violence. In conference prior to the trial starting, you go through the evidence and list of previous convictions with Miss Dickson. She explains that the list is not actually up to date as she was convicted six weeks earlier in Paris of assaulting two police officers during a street disturbance. When the current trial is called on, the Prosecutor seems completely unaware about this recent conviction and no notice has been given of any prosecution application to adduce Miss Dickson’s bad character.

(b) Identifying all relevant ethical principles and applying them to the facts, explain how you should proceed in respect of the trial and of the Paris conviction, both with Miss Dickson and the Court. You must give a detailed explanation supporting your answers. **(5 marks)**

**Mark scheme for question 2(a)**

1. (a) You have breached CD7, your duty to provide a competent standard of work and service [½ mark], by your:
2. failure to apply for forfeiture and/or a costs order [½ mark]; and
3. failure to inform the local authority of the result of the hearing [½ mark].
4. (a) The failure to apply for forfeiture and costs also breaches CD2, your duty to act in the best interests of your client (and rC15) [½ mark],
5. as the local authority will incur inconvenience and/or additional expense in seeking these orders once the case has concluded. [½ mark]
6. (a) You have a duty to take reasonable steps to mitigate any breaches of the Handbook, rC15.2 [½ mark]
7. and to do so regardless of the consequences to yourself [½ mark].
8. Therefore, you should have raised your omission with the court before the parties left the court building [½ mark]
9. to avoid the need for a further hearing [½ mark]
10. under the ‘Slip Rule’ [½ mark].
11. At the very least, you should have made your mistake known to the court as soon as possible. [½ mark]
12. (a) You have also breached CD3, the duty to act with honesty and with integrity [½ mark],
13. by lying to your client about making the applications as instructed. [½ mark]
14. Your duty to act with honesty includes the requirement not to knowingly mislead *anyone*, including your client, rC9.1. [½ mark]
15. (a) Your dishonesty is also a breach of CD5 [½ mark]
16. as public trust and confidence in the profession is diminished if it becomes known that barristers cannot be trusted to be truthful, even to their own clients. [½ mark] rC8, gC16

**Mark scheme for question 2(b)**

[NOTE TO MARKERS– This sub-question is deliberately set in a trial context. Discussion about mandatory sentences would represent the presentation of mere knowledge without application to the given scenario, as, even if convicted, no mandatory sentence consideration arises.]

1. (a) You have a duty to the court in the administration of justice (CD1) and cannot mislead the court (rC3.1 and rC6.1) [½ mark]
2. so you cannot assert whether expressly or impliedly (either in cross-examination of a police officer or examination of Miss Dickson) that Miss Dickson has no previous convictions for violence. [½ mark]
3. You must not do anything which could reasonably be seen by the public to undermine your honesty and integrity (CD3 and rC8). You must also not act in a way that diminishes public confidence in you or the profession (CD5). Exploiting the prosecution’s lack of knowledge to the extent of asserting/implying that Miss Dickson does not have any convictions for violence would be acting dishonestly/diminish public confidence. [Up to 1 mark for identifying either/both ethical principle(s) and applying it/them correctly]
4. (a) Importantly, however, you have a duty of confidentiality to Miss Dickson (CD6). [½ mark]
5. Your duty not to mislead the court does not require you to make disclosure of her previous conviction for violence without her consent. [½ mark]
6. nor, in the absence of consent, does it require you to cease to act (rC5). [½ mark]
7. (a) It is the prosecution’s responsibility to ensure that the Court has an accurate list of previous convictions [½ mark]
8. and your duty to act in Miss Dickson’s best interests (CD2) [½ mark]
9. prevents you from disclosing the previous conviction without Miss Dickson’s express consent. [½ mark]
10. Your duty of confidentiality is not affected/would not be overridden by the Criminal Procedure Rules’ overriding objective to deal with cases justly etc. [½ mark]
11. You should explain to Miss Dickson that:
    1. You cannot conduct her defence as if she has no previous convictions for violence [½ mark],
    2. however, you can still contest the case fully by disputing the facts as per her instructions; [½ mark]
    3. You will not disclose to the Court her recent previous conviction; [½ mark]
    4. She should not make any reference to her previous convictions; [½ mark]
    5. Despite the rule on confidentiality, she should bear in mind that the prosecution may well find out about her previous conviction during the trial and you should explain the potential consequences of this [½ mark].

This is the end of the exam paper