

**BAR
STANDARDS
BOARD**

REGULATING BARRISTERS

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

**Bar Training, BTT & BPTC
August 2023 Sitting**

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 9 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. This report presents the result for the ninth iteration of examinations attempted by Bar Training Course candidates in August 2023, the confirmed post-intervention outcomes for which are as follows:

All Providers (Post-Intervention Results)									
	Dec-20	Apr-21	Aug-21	Dec-21	Apr-22	Aug-22	Dec-22	Apr-23	Aug-23
Civil Litigation									
No. of candidates	407	989	738	823	1517	790	929	1671	889
Passing rate	55.8%	55.5%	41.3%	53.6%	59.6%	46.2%	56.4%	59.8%	45.1%
Criminal Litigation									
No. of candidates	383	1104	827	824	1653	802	596	1583	840
Passing rate	59.8%	46.2%	42.4%	55.9%	63.7%	52.5%	49.8%	65.6%	39.9%

In comparing results across the nine iterations of assessment it should be noted that for the December 2020 sit, only nine AETO centres presented cohorts of candidates for assessment. For April 2021 the figure was 19 AETO centres, which explains why there were significantly more candidates for that sitting compared to December 2020. From April 2021 onwards, sittings will have comprised a mix of first sit (new and deferred) and resitting candidates (ie, candidates who had previously failed an assessment without extenuating circumstances). The April 2022 sitting saw the first cohorts entered by ULaw Liverpool, the December 2022 sitting the first cohorts entered by the University of Hertfordshire, and the April 2023 sitting the first candidates entered by ULaw Newcastle. For the August 2023 sitting, therefore, there were 21 AETO assessment centres providing candidate cohort results. As can be seen in the above table, the August 2023 passing rate for Criminal Litigation was the lowest to recorded across all nine sittings, and the passing rate for Civil Litigation the second lowest recorded across all nine sittings. The August sitting tends to involve a larger cohort of resitting candidates which may explain why the August sitting passing rate tends to be lower than that achieved in either the April or December sittings. See further on candidate numbers at 1.3 and 1.4, below.

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 items). 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.

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). For 2010/11, all BPTC Providers were required to assess candidates in Professional Ethics; Civil Litigation, Remedies¹ & Evidence ('Civil Litigation'); and Criminal Litigation, Evidence & Sentencing ('Criminal Litigation') (often referred to as the 'knowledge areas') by means of multiple-choice questions (MCQs) and short answer questions (SAQs). Together these three subjects represented 25% of the BPTC (ie, 30 credits out of 120). For 2010/11, the knowledge area assessments were set and marked by the BPTC Providers. Centralising these 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 for the knowledge areas on the BPTC, with assessments compiled independently of the BPTC Providers 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 Authorised Education and Training Organisations ('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 MCQ and SBA questions. 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 the Civil 2 examination. 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 2¹.
- 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 BPTC candidates did not attempt the Civil 1 or Civil 2 papers but continued to attempt a post-2017 BPTC format Civil Litigation assessment until BPTC examinations were phased out, the final BPTC Civil Litigation assessment taking place in spring 2022.

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 sitting 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 sitting. 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/uploads/assets/4cd5c577-4668-4e46-944a3fa11f84a9bc/2022-AETO-Factsheet-for-Vocational-Component.pdf>

1.2.6 When reviewing the data contained in this report—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.
- 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 sitting, the vast majority of candidates were sitting for the first time, and that the majority of those attempting the Summer sitting were referred or deferred candidates (hence enabling year on year comparison of Spring or Summer sitting results) no such certainty exists in relation to the make-up of the cohorts attempting the Spring, Summer or Winter sittings of the centralised examinations for the Bar Training Course.

1.3 Candidate numbers by AETO centre: Civil Litigation

AETO	Dec-20	Apr-21	Aug-21	Dec-21	Apr-22	Aug-22	Dec-22	Apr-23	Aug-23	Total to date
BPP Birmingham	28	31	28	40	47	32	56	42	55	359
BPP Bristol	19	16	14	19	7	9	8	9	6	107
BPP Leeds	27	32	20	35	16	5	16	18	9	178
BPP London	151	179	150	262	274	173	260	299	244	1992
BPP Manchester	58	54	35	89	49	37	73	73	79	547
Cardiff	51	39	15	60	35	14	72	25	13	324
City	22	208	132	59	378	136	75	397	105	1512
Hertfordshire	N/A	N/A	N/A	N/A	N/A	N/A	13	6	7	26
ICCA	28	34	5	56	33	14	89	38	14	311
MMU	23	9	11	24	7	8	23	12	7	124
Northumbria	N/A	64	36	15	64	36	14	69	24	322
NTU	N/A	50	37	23	53	34	24	74	42	337
ULaw Birmingham	N/A	34	41	18	82	51	30	89	46	391
ULaw Bristol	N/A	13	4	1	18	5	3	33	9	86
ULaw Leeds	N/A	22	17	7	43	25	12	60	31	217
ULaw Liverpool	N/A	N/A	N/A	N/A	16	5	2	56	21	100
ULaw London	N/A	89	106	65	216	137	101	197	96	1007
ULaw Manchester	N/A	19	18	7	54	20	7	44	18	187
ULaw Newcastle	N/A	N/A	N/A	N/A	N/A	N/A	N/A	9	5	14
ULaw Nottingham	N/A	7	1	2	16	7	6	12	3	54
UWE	N/A	89	68	41	109	42	45	109	55	558
TOTAL	407	989	738	823	1517	790	929	1671	889	8753

1.3.1 The December 2020 sit was the first opportunity for candidates to attempt the centralised assessments for the Bar Training Course, hence the lower volume of candidates. As can be seen, for the August 2023 sit, BPP London had the largest cohort, accounting for 27.4% of the Civil Litigation candidate entries, and has provided 22.8% of the total number of candidate entries across the nine sittings offered thus far. As noted above, seven AETOs have cohort numbers in single figures for the August 2023 sit, a factor that can impact significantly on the comparison of cohort data.

1.4 Candidate numbers by AETO centre: Criminal Litigation

AETO	Dec-20	Apr-21	Aug-21	Dec-21	Apr-22	Aug-22	Dec-22	Apr-23	Aug-23	Total to date
BPP Birmingham	28	30	29	43	64	22	36	32	33	317
BPP Bristol	20	16	13	26	5	7	N/A	1	9	97
BPP Leeds	20	25	24	35	20	7	5	14	20	170
BPP London	137	202	174	270	261	199	120	184	247	1794
BPP Manchester	52	62	47	91	60	34	35	65	49	495
Cardiff	54	37	19	19	70	21	20	68	15	323
City	20	247	154	77	425	141	61	408	114	1647
Hertfordshire	N/A	N/A	N/A	N/A	N/A	N/A	15	9	10	34
ICCA	32	31	7	56	31	13	92	37	9	308
MMU	20	14	11	20	11	7	24	8	7	122
Northumbria	N/A	40	25	13	64	24	14	75	14	269
NTU	N/A	51	36	23	55	32	24	69	38	328
ULaw Birmingham	N/A	46	49	20	88	56	19	80	40	398
ULaw Bristol	N/A	15	2	N/A	18	5	2	32	7	81
ULaw Leeds	N/A	38	20	8	47	25	9	60	30	237
ULaw Liverpool	N/A	N/A	N/A	N/A	17	2	2	59	20	100
ULaw London	N/A	107	127	73	234	129	76	174	103	1023
ULaw Manchester	N/A	23	19	7	61	9	3	43	13	178
ULaw Newcastle	N/A	N/A	N/A	N/A	N/A	N/A	N/A	9	1	10
ULaw Nottingham	N/A	5	1	2	14	3	3	13	3	44
UWE	N/A	115	70	41	108	66	36	143	58	637
TOTAL	383	1104	827	824	1653	802	596	1583	840	8612

1.4.1 As with the data for Civil Litigation, the December 2020 sit was the first opportunity for candidates to attempt the centralised assessments for the Bar Training Course, hence the lower volume of candidates. As can be seen, for the August 2023 sit, BBP London had the largest cohort, accounting for 29.4% of the Criminal Litigation candidate entries, and has provided 20.8% of the total number of candidate entries across the nine sittings offered thus far. As noted above, six AETOs have cohort numbers in single figures for the August 2023 sit, a factor that can impact significantly on the comparison of cohort data.

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 examiner team, 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 in order 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, the relevant candidates are not allowed to leave their assessment area until the commencement of the main cohort assessment. 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. The August 2023 Bar Training exam dates were as follows:

Criminal Litigation:	Monday 14 August 2023 at 14:00
Civil Litigation (Paper 1):	Wednesday 16 August 2023 at 14:00
Civil Litigation (Paper 2):	Friday 18 August 2023 at 14:00

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 Providers 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, the independent psychometrician, 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 is advised by the independent psychometrician in respect of 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 assessment pro-formas returned by the AETOs – thus flagging up any correlation of AETO criticisms and concerns with systemic poor performance by candidates.
 - statistical analysis by the psychometrician, including facility values, point biserials, and a measure of discrimination for each distractor.
 - 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 advised by the independent psychometrician, 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 meeting is attended by the CEB Chair, the relevant Chief Examiners, key BSB staff, an independent psychometrician, and an independent observer. 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. 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 award and progression examination Boards. The actual scores achieved by candidates need to be aligned with a 60% passing mark in order to best fit with the AETOs' systems. 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. BAR TRAINING CRIMINAL LITIGATION RESULTS AUGUST 2023 SIT

3.1 Exam Board decisions in relation to selected questions

- 3.1.1 The CEB invited AETOs to provide feedback on the examination paper as a whole and 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. 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.
- 3.1.2. 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 psychometrician advising the Exam Board, analyses the data on cohort performance and prepares a report on any apparent anomalies in terms of passing rates for individual questions, poor correlation, and low discrimination.
- 3.1.3 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.
- 3.1.4 For the August 2023 Criminal Litigation assessment, requests for intervention from AETOs were received in relation to 8/75 questions (see 3.1.5, below). Typically, responses from AETOs raised issues such as the possibility of there being more than one 'best' answer; syllabus coverage; the level of challenge offered by the question; and whether the question was one that it was fair to ask candidates at this stage in their training.

3.1.5 Summary of Exam Board deliberations

The table below provides a summary of the Exam Board deliberations where interventions (if any) were agreed, and instances where, although no intervention was agreed, points for future reference were raised in the Board's deliberations.

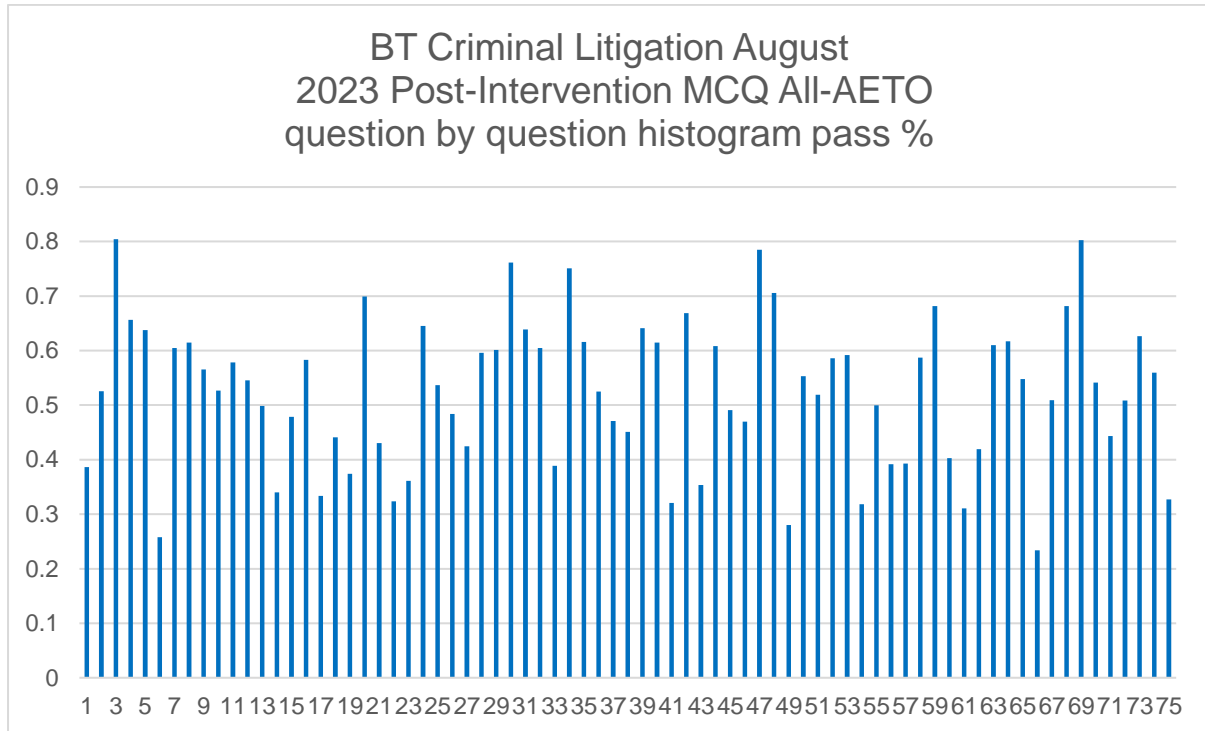
Item	Number of AETOs requesting an intervention	Exam Board decision and rationale
Q.14	1	<p>Passing rate 33%. Very poor discrimination. AETO feedback proposed that distractor [C] should have been credited as well as correct answer [A]. The Chief Examiner noted that the distractors [A] and [C] were the complete opposite of each other and that the fact pattern was very clear in its wording indicating how candidates were reasonably expected to get to the correct answer.</p> <p><i>The board decided not to intervene.</i></p>
Q.21	1	<p>Passing rate 43%. Very good discrimination. AETO feedback proposed that distractor [A] as well as correct answer [C] should have been credited. The examining team disagreed with this noting the question had been used three times previously without issue and the statistics did not provide evidence that any intervention was needed.</p> <p><i>The board decided not to intervene.</i></p>
Q.24	1	<p>Passing rate 67%. Very good discrimination. AETO feedback was not relevant to the validity of the question.</p> <p><i>The board decided not to intervene.</i></p>
Q.25	1	<p>Passing rate 53%. Very good discrimination. AETO feedback proposed that distractor [B] as well as correct answer [A] should have been credited. The Chief Examiner disagreed with this noting that the wording in distractor [B] made it incorrect and that the BCP reading on the question was also very clear.</p> <p><i>The board decided not to intervene.</i></p>
Q.28	1	<p>Passing rate 61%. Good discrimination. AETO feedback proposed that distractor [A] and distractor [B] as well as correct answer [D] should have been credited. The Chief Examiner disagreed with this, noting that [D] was the correct answer and the BCP reading backed this up.</p> <p><i>The board decided not to intervene</i></p>

Item	Number of AETOs requesting an intervention	Exam Board decision and rationale
Q.42	1	<p>Passing rate 31%. Poor discrimination. AETO feedback proposed that distractor [C] as well as correct answer [B] should have been credited. The Chief Examiner noted that, the question was intended to test candidates' ability to identify the best gateway for the admission of non-defendant bad character. AETO feedback suggested that students would find it difficult to distinguish between options [B] and [C], given the facts of the question. The intended best answer [B] had a low positive correlation of 0.18, with only 31% of candidates selecting this option. Option [C] was more popular than [B], with 35% of candidates selecting it, although it did have a slight negative correlation (-0.04). After discussion at the Subject Board, the examiners agreed that both [B] and [C] were potential courses of action having considered the syllabus reading. The question had been set on the basis that the best answer was reflected by a specific example in the reading, but the examining team agreed that it would be reasonable for candidates to reach the conclusion that the credibility of the witness was of substantial importance to the case as a whole. Given this conclusion, it was agreed that it would be difficult for a candidate to distinguish the two options and therefore it was agreed that, to ensure fairness to all candidates, both distractors [B] and [C] should be credited as correct responses.</p> <p>The board decided to intervene and credit distractor [C] as well as correct answer [B].</p>
Q.46	1	<p>Passing rate 36%. Very poor discrimination. This question was intended to test candidates' ability to choose the most effective tactic during cross-examination. AETO feedback requested that both option [A] and designated 'best' answer [C] should be credited, on the basis that the syllabus reading did not allow candidates to sufficiently distinguish between the two options. The question had very poor discrimination of 0.08. The intended best answer had a weak positive correlation with all other options having a low negative correlation. Although only 13% of the cohort selected option [A], the examiners proposed that the fairest course of action was to credit option [A] in addition to [C]. The examining team also advised that, having looked at the syllabus reading in more detail, it became apparent that it was very limited on</p>

Item	Number of AETOs requesting an intervention	Exam Board decision and rationale
		<p>this topic and, whilst a practitioner would readily identify the best answer to this question, it would be much harder for a Bar student with no practical experience. To ensure fairness to all candidates it was proposed that both distractors [A] and [C] should be credited as correct responses.</p> <p>The board decided to intervene and credit distractor [A] as well as correct answer [C].</p>
Q.60	1	<p>Passing rate 42%. Very good discrimination. AETO feedback proposed that distractor [A] should have been credited as well as correct answer [B]. The examining team disagreed with this, pointing to the statistics which suggested that the question was working well.</p> <p><i>The board decided not to intervene.</i></p>
Q.64	1	<p>Passing rate 64%. Good discrimination. AETO feedback proposed that distractor [D] should have been credited as well as correct answer [C]. The examining team disagreed with this, pointing to the statistics which suggested that the question was working well, they also noted the BCP reading backed up the correct answer.</p> <p><i>The board decided not to intervene</i></p>
Q.74	1	<p>Passing rate 58%. Poor discrimination. AETO feedback proposed that distractor [C] as well as correct answer [A] should have been credited. The examining team disagreed with this, noting the careful wording and layout of the question.</p> <p><i>The board decided not to intervene.</i></p>

3.2 Post-intervention histogram of MCQs

The histogram below shows the facility score (% of Bar Training candidates answering correctly) for each of the questions in the August 2023 Criminal Litigation examination.



The post-intervention data shows 16 MCQs with an all-AETO cohort pass rate below 40% (compared to 4 for the April 2023 sit). There is no clear evidence to suggest a fall-off in candidate performance during the examination (assuming most candidates attempted the 75 MCQs in the order presented). Across the first 25 MCQs the average pass rate was 52%, across MCQs 26 to 50 it rose to 54%, and across MCQs 51 to 75 it reverted to 52%. The word count of the assessment was not felt by the Final Board to have been an issue.

3.3 Standard setting and reliability of the assessment

3.3.1 The pass standard reported to the Criminal Litigation Subject Board was 43.1/75, rounded up to 44 to follow standard practice. The outcome of the standard setting process is a recommended pass standard rather than a determined outcome of what the pass standard should be. The Final Board considered advice from the psychometrician regarding the set of 'Anchor' questions (ie, questions repeated from one paper to another without alterations) used for the August 2023 sitting, and that fact that it was standard practice to carry forward the standard setting ratings established for each of the 'Anchor' question from one sitting to the next provided the question remained unchanged. The psychometrician reported that the mean scores for the 'Anchor' questions used in both the April 2022 sitting and the August 223 sitting were 56% and 48% respectively, hence 8% lower for the August 2023 sitting. The psychometrician advised that this was a clear indication that the

August 2023 cohort may have been less able than that of April 2022. Against this, correlation of the outcomes for candidates who attempted both litigation papers in the August 2023 sit (see further detail at XXXX), suggested that the Criminal Litigation paper may have presented more of a challenge to candidates compared to the Civil Litigation paper (although the evidence was far from conclusive on this point). Bearing these factors in mind, the Final Board agreed to a proposal to round the pass standard down by 0.1 instead of rounding up by 0.9 to ensure the fairest possible outcome for candidates.

3.3.2 Data supplied to the Final Exam Board by the psychometrician indicated that, with a KR-20 Reliability score of 0.86, the assessment had exceeded the benchmark KR-20 Reliability of 0.8. The Exam Board noted that all other data suggested an assessment operating as expected.

	Dec-21	Apr-22	Aug-22	Dec-22	Apr-23	Aug-23
No. of Candidates	824	1653	802	594	1583	840
No. of Scored Items	75	75	75	75	75	75
Pass Standard	44 (58.7%)	44 (58.7%)	42 (56.0%)	44 (58.7%)	43 (57.3%)	43
No. Passing	461 (55.9%)	1053 (63.7%)	421 (52.5%)	296 (49.8%)	1039 (65.6%)	335 (39.9%)
Mean Score	44.72 (59.62%)	46.62 (62.16%)	42.02 (56.03%)	44.18 (58.91%)	47.0 (62.7%)	39.5 (52.7%)
Standard Deviation	9.77 (13.03%)	10.35 (13.79%)	9.44 (12.58%)	10.81 (14.42%)	11.2 (14.9%)	10.7 (14.3%)
Range of Scores	13 to 70	5 to 71	15 to 70	15 to 72	11 to 74	13 to 69
Reliability (KR-20)	0.85	0.87	0.83	0.88	0.89	0.87
Reliability for Equivalent 90-item Test	0.87	0.89	0.85	0.89	0.90	0.88
Standard Error of Measurement	3.80 (5.06%)	3.71 (4.95%)	3.91 (5.21%)	3.82 (5.09%)	3.7 (5.0%)	4 (5.33%)

3.4 Chief Examiner's Report

The Chief Examiner for Criminal Litigation reported that she was satisfied that this assessment was fair to candidates and allowed them to demonstrate their competence to the required threshold, noting that comments from AETOs were generally positive overall.

3.5 Independent Observer confirmation

The Independent Observer endorsed the proceedings in respect of the Criminal Litigation assessment.

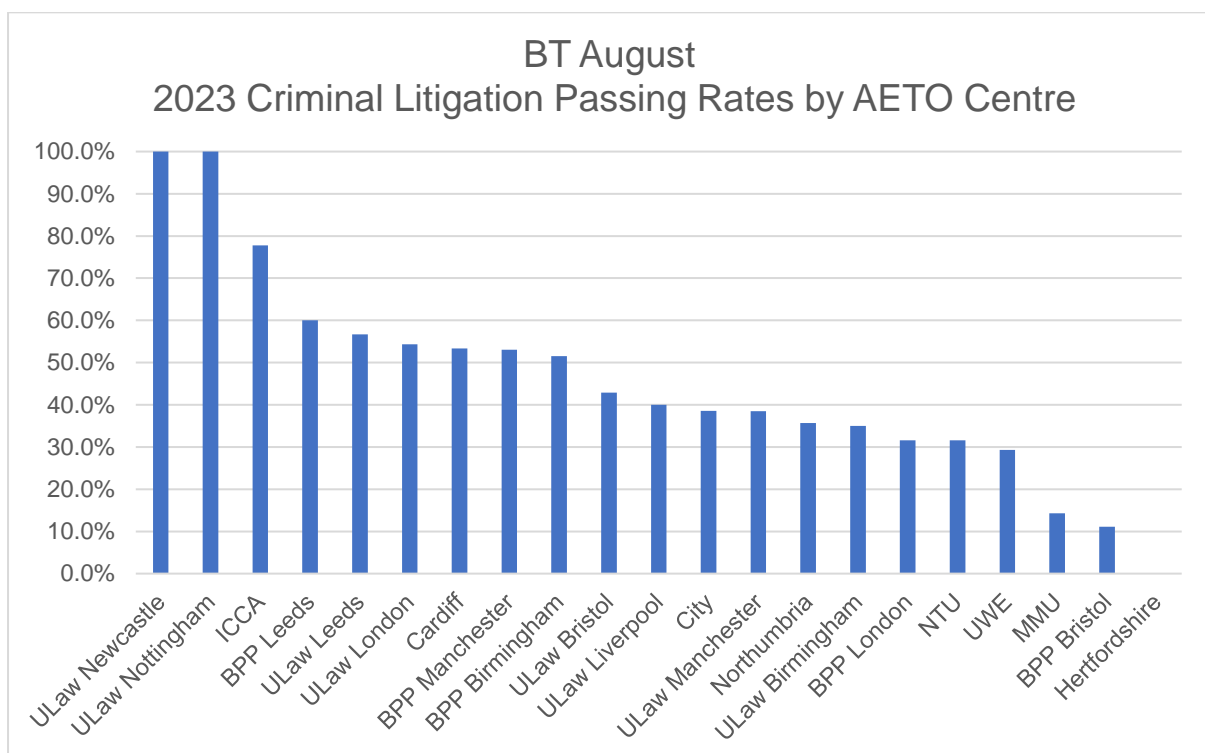
3.6 Criminal Litigation post-intervention pass rate August 2023

All-AETO Post-Intervention	Criminal Litigation December 2021	Criminal Litigation April 2022	Criminal Litigation August 2022	Criminal Litigation December 2022	Criminal Litigation April 2023	Criminal Litigation August 2023
Number of Candidates	824	1653	802	594	1583	840
Passing Rate	55.9%	63.7%	52.5%	49.8%	65.6%	39.9%

The table above shows the all-AETO August 2023 post-intervention Bar Training cohort pass rate of 39.9% for Criminal Litigation, based on a passing standard

recommended to the Final Board (as a result of the standard setting process) of 43/75. The post-intervention passing rate is the lowest across the last six cycles. Data presented to the exam boards for the August 2023 sitting showing the split between first sit and resit candidates for Criminal Litigation revealed that 43.4% were attempting on a first sit basis (ie first ever attempt at the examination, or previous attempts discounted on the basis of accepted extenuating circumstances), and 56.6% as resit candidates (ie candidates who had previously failed the examination without mitigating circumstances having been submitted or accepted). The fact that a preponderance of candidates were resitting may have been a factor in driving down the overall passing rate (the passing rate for first candidates in Criminal Litigation was 50.4% compared to 24.1% for resitting candidates).

3.7 August 2023 Criminal Litigation pass rates by AETO centre



3.7.1 In the above graph the 21 AETO centre cohorts are ranged left to right in declining order of their August 2023 pass rates in the Criminal Litigation assessment. Whilst ULaw Newcastle and ULaw Nottingham both share the top spot in terms of August 2023 passing rates at 100%, it should be noted that these AETO centres had only one and three candidates respectively. None of 10 candidates entered by Hertfordshire passed. The passing rate for first sit candidates across all AETOs was 50.4%, compared with 24.1% for resitting candidates.

3.7.2 Distribution of first sit candidates across the AETO centres for Criminal Litigation August 2023 sitting

AETOs Ranked by % of cohort first sitting			
AETO	Cohort Size	# First Sit	% First Sit
ICCA	9	9	100.0%
Northumbria	14	13	92.9%
ULaw London	103	63	61.2%
BPP Leeds	20	12	60.0%
BPP London	247	135	54.7%
BPP Manchester	49	25	51.0%
BPP Birmingham	33	16	48.5%
BPP Bristol	9	4	44.4%
ULaw Leeds	30	12	40.0%
City	114	38	33.3%
ULaw Birmingham	40	13	32.5%
UWE	58	17	29.3%
MMU	7	1	14.3%
Cardiff	15	2	13.3%
ULaw Manchester	13	1	7.7%
ULaw Liverpool	20	1	5.0%
NTU	38	1	2.6%
Hertfordshire	10	0	0.0%
ULaw Bristol	7	0	0.0%
ULaw Newcastle	1	0	0.0%
ULaw Nottingham	3	0	0.0%
OVERALL	840	363	43.2%

Only 6 AETO centres entering candidates for the August 2023 Criminal Litigation assessment had a preponderance of resitting candidates.

3.7.3 Comparison of first sit and resit candidate passing rates at each AETO for Criminal Litigation August 2023 sitting

First Sit Pass Rates and Resit Pass Rates		
AETO	First Sit % Pass	Resit % Pass
BPP Birmingham	63%	41%
BPP Bristol	0%	20%
BPP Leeds	50%	63%
BPP London	38%	14%
BPP Manchester	64%	29%
Cardiff	50%	46%
City	58%	20%
Hertfordshire	N/A	0%
ICCA	78%	N/A
MMU	0%	0%
Northumbria	31%	100%
NTU	100%	24%
ULaw Birmingham	54%	26%
ULaw Bristol	N/A	43%
ULaw Leeds	67%	29%
ULaw Liverpool	0%	39%
ULaw London	70%	23%
ULaw Manchester	0%	36%
ULaw Newcastle	N/A	100%
ULaw Nottingham	N/A	100%
UWE	35%	20%
OVERALL	50.40%	24.10%

Of the 16 AETO centres with both first sit and resit candidates attempting the August 2023 Criminal Litigation assessment, five reported a higher passing rate for their resit cohort compared to their first sit cohort. Again, the low number of candidates is a factor, ULaw London and ULaw Manchester each having only one resit candidate, and Northumbria only having one first sit candidate.

3.7.4 Passing rates of first sit cohorts at each AETO for Criminal Litigation August 2023 sitting

AETOs Ranked by First Sit Pass Rate CRIMINAL LITIGATION	
AETO	First Sit % Pass
NTU	100%
ICCA	78%
ULaw London	70%
ULaw Leeds	67%
BPP Manchester	64%
BPP Birmingham	63%
City	58%
ULaw Birmingham	54%
BPP Leeds	50%
Cardiff	50%
BPP London	38%
UWE	35%
Northumbria	31%
BPP Bristol	0%
MMU	0%
ULaw Liverpool	0%
ULaw Manchester	0%
Hertfordshire	N/A
ULaw Bristol	N/A
ULaw Newcastle	N/A
ULaw Nottingham	N/A

Three AETO centres failed to pass more than 50% of their first sit candidates in the August 2023 Criminal Litigation assessment. Of these BPP London had the largest number of first sit candidates (135). All University of Hertfordshire candidates were resitting. NTU had only one first sit candidate.

3.8 Criminal Litigation trend data – how AETO cohorts have performed over the last 6 sittings

	Dec 21 % Pass	Apr 22 % Pass	Aug 22 % Pass	Dec 22 % Pass	Apr 23 % Pass	Aug 23 % Pass	Average over 6 sits
ULaw Newcastle					88.9	100.0	94.5
ICCA	94.6	87.1	100.0	89.1	89.2	77.8	89.6
Cardiff	52.6	74.3	47.6	60.0	83.8	53.3	61.9
Ulaw Leeds	25.0	78.7	60.0	77.8	66.7	56.7	60.8
Ulaw London	50.7	73.9	53.5	40.8	67.2	54.4	56.7
BPP Bristol	69.2	40.0	57.1		100.0	11.1	55.5
Ulaw Nottingham	50.0	71.4	33.3	0.0	76.9	100.0	55.3
BPP Manchester	56.0	53.3	58.8	45.7	64.6	53.1	55.3
City	49.4	71.1	51.1	44.3	74.3	38.6	54.8
BPP Leeds	68.6	45.0	42.9	60.0	50.0	60.0	54.4
BPP Birmingham	46.5	50.0	40.9	52.8	68.8	51.5	51.8
BPP London	58.5	40.6	61.3	41.7	63.6	31.6	49.6
Northumbria	23.1	64.1	37.5	57.1	76.0	35.7	48.9
Ulaw Birmingham	40.0	70.5	35.7	36.8	60.0	35.0	46.3
Ulaw Bristol		66.7	40.0	0.0	75.0	42.9	44.9
Ulaw Manchester	42.9	78.7	44.4	0.0	62.8	38.5	44.5
UWE	39.0	57.4	57.6	25.0	48.3	29.3	42.8
MMU	55.0	54.5	42.9	58.3	25.0	14.3	41.7
Ulaw Liverpool		70.6	50.0	0.0	47.5	40.0	41.6
NTU	34.8	50.9	18.8	37.5	36.2	31.6	35.0
Hertfordshire				20.0	22.2	0.0	14.1

3.8.1 AETO centre cohorts are listed in order of the average of their Criminal Litigation passing rates across the last six sittings of the Bar Training centralised assessments. Note that Hertfordshire entered candidates for the first time in the December 2022 sit, and ULaw Newcastle for the first time in April 2023. Greyed out cells indicate other instances in the table above where an AETO centre did not enter any candidates. The calculation of AETO centre averages have been adjusted to reflect this. The data shows that ULaw Newcastle currently has the highest average passing rate (94.5%), albeit achieved across only two of the six sittings within the scope of this analysis. Hertfordshire has the lowest at 14.1% (this figure being driven by all resit candidates failing in the August 2023 sitting for Criminal Litigation). The ICCA cohort has achieved the highest average passing rate (89.6%) for those AETOs with data for all six sittings, and NTU the lowest at 35%.

3.8.2 An alternative way of assessing the success of each AETO across all the sittings to date (ie, nine sittings in total) is to consider the cumulative total of candidates entered thus far and to compare this with the cumulative total number of candidates who have secured a pass.

BT Criminal Litigation - December 2020 to August 2023 (9 sits)			
AETO	Total Number of Attempts	Total Number of Passes	% Pass
ICCA	308	281	91.2%
ULaw Newcastle	10	9	90.0%
ULaw Nottingham	44	30	68.2%
ULaw Bristol	81	55	67.9%
ULaw Leeds	237	149	62.9%
City	1647	1014	61.6%
ULaw Manchester	178	109	61.2%
Cardiff	323	189	58.5%
ULaw London	1023	597	58.4%
Northumbria	269	148	55.0%
BPP Manchester	495	265	53.5%
ULaw Birmingham	398	208	52.3%
BPP Leeds	170	87	51.2%
ULaw Liverpool	100	48	48.0%
BPP London	1794	841	46.9%
BPP Bristol	97	45	46.4%
BPP Birmingham	317	141	44.5%
UWE	637	271	42.5%
MMU	122	48	39.3%
NTU	328	118	36.0%
Hertfordshire	34	5	14.7%
TOTAL	8612	4658	54.1%

As can be seen from the above table 4,658 candidates have passed Bar Training Criminal Litigation assessments since the first sitting in December 2020, based on 8,612 attempts – thus the aggregate passing rate to date is 54.1%. There are 11 AETOs failing to achieve this average thus far, with a 76.5% range in cumulative passing rates between the strongest and weakest AETO centre cohorts. Eight AETO centres are failing to progress at least 50% of their candidates in Criminal Litigation.

4. BAR TRAINING CIVIL LITIGATION RESULTS AUGUST 2023 SIT

4.1 Exam Board decisions in relation to selected questions

- 4.1.1 The CEB invited AETOs to provide feedback on the examination paper as a whole and 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. 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.
- 4.1.2 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 psychometrician advising the Exam Board analyses the data on cohort performance and prepares a report on any apparent anomalies in terms of passing rates for individual questions, poor correlation, and low discrimination.
- 4.1.3 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.
- 4.1.4 For the August 2023 Civil Litigation assessment requests for intervention from AETOs were received in relation to 8/90 questions (see 4.1.5, below). Typically, responses from AETOs raised issues such as the possibility of there being more than one 'best' answer; syllabus coverage; the level of challenge offered by the question; and whether the question was one that it was fair to ask candidates at this stage in their training.

4.1.5 Summary of Exam Board deliberations

The table below provides a summary of the Exam Board deliberations where interventions (if any) were agreed, and instances where, although no intervention was agreed, points for future reference were raised in the Board's deliberations.

Item	Number of AETOs responding	Exam Board decision and rationale
Paper 1		
Q.1	1	<p>Passing rate 51% and satisfactory discrimination. The AETO feedback suggested the answer provided was not correct due to new CPR rules. The Board noted that the AETO comment was correct as regards the 2023 rules, but the assessment was based on the 2022 rules. Rule 21.10(3) was not in the 2022-23 syllabus. The statistics did not support the concerns expressed in the AETO feedback. The Board discussed the question and agreed not to intervene.</p> <p><i>The Board decided not to intervene.</i></p>
Q.10	1	<p>Passing rate 47%. Good discrimination. The AETO feedback was noted but it was agreed that it was not relevant to the validity of the question.</p> <p><i>The Board decided not to intervene.</i></p>
Q.12	0	<p>Passing rate 14%. Negative discrimination.</p> <p>This question was intended to assess the candidates' knowledge and understanding of how the determination of an expert may be enforced. It was expected that candidates would identify option [A] as the correct answer, however, there was an error in the yearly rent amount presented in option [A]. It reads £30,800; it should have read £30,000. The examining team considered the potential for this error to have created confusion amongst the candidates who may, as a result, have resisted selecting option [A] and chosen a different option instead. The data showed that although 14% of candidates did select option [A] this was with negative discrimination of -0.02. However, 50% selected option [B], with positive discrimination of 0.17, and 31% selected option [C], albeit with negative discrimination of -0.07. Option [D] attracted few students (4%) and with poor discrimination of -0.23.</p> <p>On balance, the team concluded that most candidates had been attracted to the options which did not contain any reference to the specific amount of the yearly rent. It</p>

Item	Number of AETOs responding	Exam Board decision and rationale
		<p>was likely that the error in mis-stating the amount in option [A] had confused the candidates and steered better candidates away from selecting the correct answer.</p> <p>The Board agreed that, in fairness to the candidates, the only appropriate course of action was to suppress the question.</p>
Q.22	1	<p>Passing rate 55%. Good discrimination. The AETO feedback suggested answer [C] should be credited in addition to [D]. The Board discussed answer [C] and the Chief Examiner confirmed that answer [C] was wrong. The Board discussed the question and agreed not to intervene but noted that the question should be shortened before being reused.</p> <p><i>The Board decided not to intervene.</i></p>
Q.24	1	<p>Passing rate 59%. Good discrimination. The AETO feedback was noted but it was agreed that it was not relevant to the validity of the question.</p> <p><i>The Board decided not to intervene.</i></p>
Q.36	3	<p>Passing rate 70%. Very good discrimination. The AETO feedback was noted but it was agreed that it was not relevant to the validity of the question.</p> <p><i>The Board decided not to intervene.</i></p>
Q.41	1	<p>Passing rate 62%. OK discrimination. The AETO feedback was noted but it was agreed that it was not relevant to the validity of the question.</p> <p><i>The Board decided not to intervene.</i></p>
Paper 2		
Q.9	1	<p>Passing rate 57%. Poor Discrimination. AETO feedback suggested distractor [C] should have been credited along with correct answer [B]. The Chief Examiner disagreed with the feedback, commenting that the statistics showed that the question had performed as expected.</p> <p><i>The Board decided not to intervene.</i></p>
Q.11	1	<p>Passing rate 59%. Poor Discrimination. AETO feedback suggested candidates would struggle to identify the correct answer due to the references. The Chief Examiner disagreed with the feedback, commenting that the team</p>

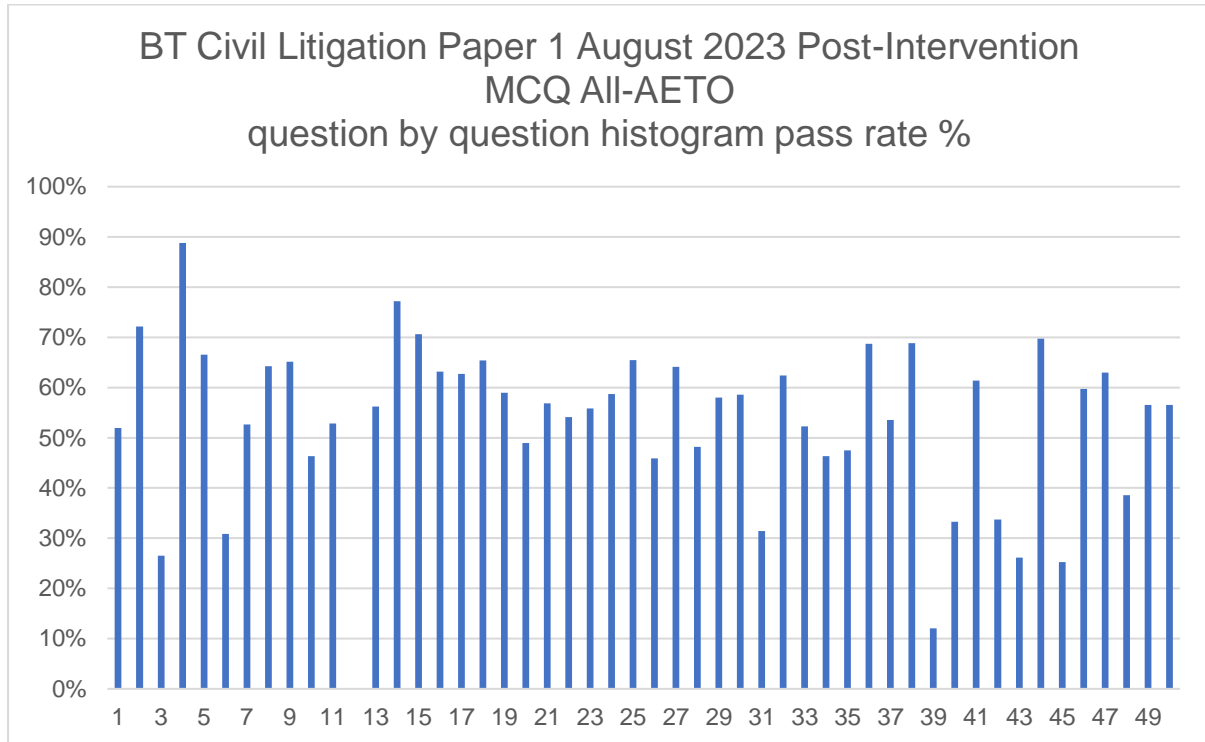
Item	Number of AETOs responding	Exam Board decision and rationale
		<p>would look at the wording before using the question again.</p> <p><i>The Board decided not to intervene.</i></p>
Q.24	1	<p>Passing rate 57%. Excellent Discrimination. AETO feedback suggested distractor [D] should have been credited along with correct answer [C]. The Chief Examiner disagreed with this and commented that there was enough distinction between distractor [D] and correct answer [C]. It was also noted that the statistics showed that the question had performed as expected. It was agreed that the team would look at the wording before using the question again.</p> <p><i>The Board decided not to intervene.</i></p>
Q.29	1	<p>Passing rate 15%. Poor Discrimination. This question was intended to assess the candidates' knowledge and understanding about how the court should approach determination of an application for a mandatory injunction. Identification of the best response to the judge's question about the correct approach was intended to be relatively straightforward. However, one AETO suggested that the question was extremely complex and subjective and that all options were possible such that it was too much of a challenge for students to be able to separate out the best response.</p> <p>The examining team had a thorough discussion about the approach to be taken and, after careful deliberation, acknowledged that the American Cyanamid guidelines (set out in option [A]) were relevant to the judge's approach even though that approach lacked the specific detail of how to address the balance of convenience where a mandatory injunction was being sought. This relevant detail is set out very clearly in option [B]. Option [C] offered something of a hybrid between [A] and [B] by referring to the "degree of likelihood" of success at trial in respect of considering the balance of convenience.</p> <p>The data showed that the designated best answer, [B], attracted only 15% of the candidates although with positive discrimination of 0.13 whereas option [A] attracted 44% of the candidates with positive discrimination of 0.10. Option [C] attracted 38% of the cohort albeit with negative discrimination of -0.15. Option [D], which the examining team agreed related more to the</p>

Item	Number of AETOs responding	Exam Board decision and rationale
		<p>jurisdiction of the judge rather than the actual approach to exercising that power, attracted only 3% of the cohort, and had negative discrimination.</p> <p>It was determined that, had the question been more narrowly framed to the correct approach to consideration of the balance of convenience within the context of an application for a mandatory injunction, then option [B] would undoubtedly have been the best answer. However, as the question was more broadly framed, it invited consideration of the other overarching guidelines and principles such that students may have found it too much of a challenge to distinguish between the best response to the approach to be taken.</p> <p>The AETO feedback and the data lent strong support to crediting option [A] and [C] in addition to option [B] in order to be as fair as possible to candidates. It was also agreed that the team would look at the wording before using the question again.</p> <p>The Board decided to intervene and credit [A] and [C] in addition to the intended correct answer [B].</p>

4.2 Post-intervention histogram of MCQs

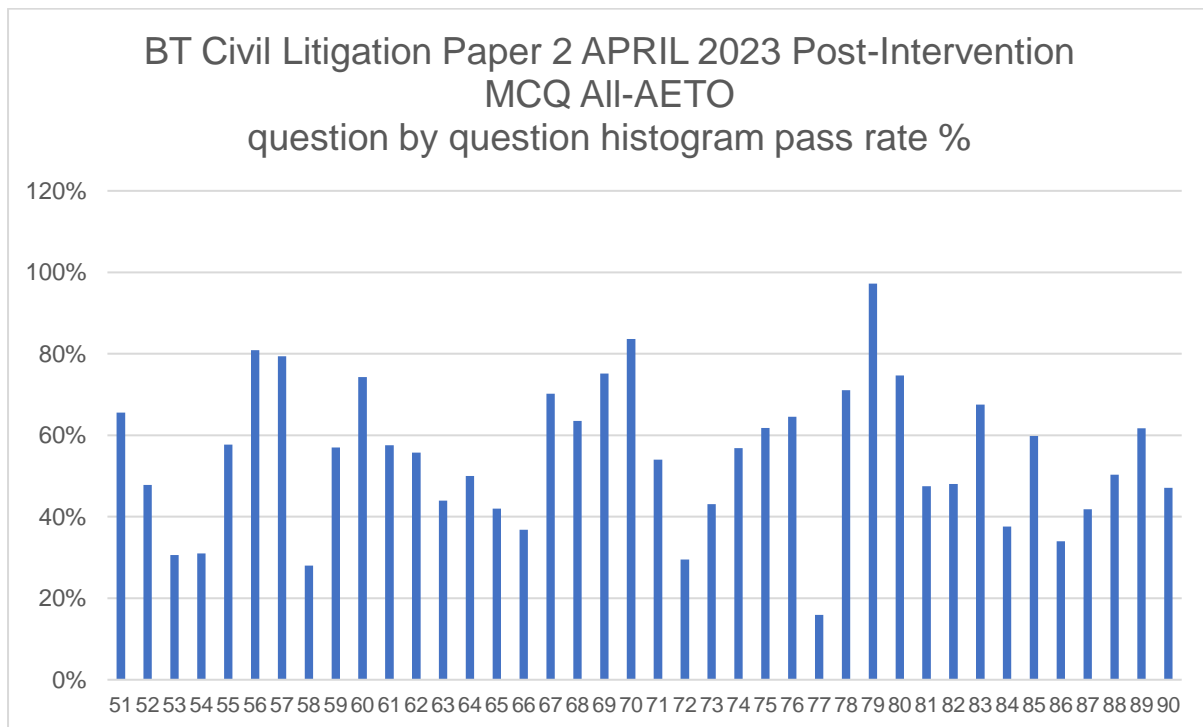
The histograms below show the facility scores (% of Bar Training candidates answering correctly) for each of the questions in the August 2023 Civil Litigation examination (following any agreed interventions detailed at 4.1.5).

4.2.1 Paper 1



For Civil Litigation Paper 1 (excluding suppressed item 12) the post-intervention data shows nine MCQs with an all-AETO cohort pass rate below 40% (compared to three for the April 2023 sit). Assuming candidates attempted the questions in the order presented there is some evidence of candidate fatigue being a factor. The average passing rate across the first 25 MCQs was 57%, compared with 50% across MCQs 26 to 50 (see discussion on pass standard below).

4.2.2 Paper 2



For Civil Litigation Paper 2 the post-intervention data shows nine MCQs with an all-AETO cohort pass rate below 40% (compared to 8 for the April 2023 sit). Across both papers 1 & 2 (89 questions) there were, therefore 18 questions with a passing rate of 40% or below, compared to 11 in the April 2023 sitting. Assuming candidates attempted the questions in the order presented there is some evidence of candidate fatigue being a factor. The average passing rate across the first 20 MCQs in paper 2 was 57%, compared to 50% across MCQs 21 to 40. It is notable, however, that the average passing rate for the first five stand-alone questions on Paper 2 was just 48%, lower than that for any of the subsequent rolling case scenarios.

4.3 Standard setting and reliability of the assessment

- 4.3.1 The Exam Board noted that on this occasion, for unavoidable operational reasons, the standard setting exercise was completed after the examination had been sat. While there is no requirement that standard setting should take place before the examination is sat, this was a departure from normal procedure. The Chair of standard setting meeting confirmed that, this matter aside, the process had been conducted properly and no concerns were raised. As a result of the Final Board's decision to suppress question 12 on Paper 1, the pass standard was recalculated and consequently confirmed by the Final Board as being 49.9/89, rounded by convention to 50/89.
- 4.3.2 Data supplied to the final Exam Board by the psychometrician indicated that the assessment had exceeded the benchmark score for reliability. The Exam

Board noted that all other data suggested an assessment operating as expected.

	Dec-21	Apr-22	Aug-22	Dec-22	Apr-23	Aug-23
No. of Candidates	823	1517	790	929	1671	889
No. of Scored Items	90	89	90	90	89	89
Pass Standard	50 (55.6%)	49 (55.1%)	52 (57.8%)	48 (53.3%)	51 (57.3%)	50 (56.2%)
No. Passing	441 (53.6%)	904 (59.6%)	365 (46.2%)	524 (56.4%)	1000 (59.8%)	401 (45.1%)
Mean Score	50.60 (56.23%)	52.45 (58.93%)	50.16 (55.74%)	50.50 (56.11%)	53.7 (60.4%)	48.2 (53.6%)
Standard Deviation	12.22 (13.57%)	13.59 (15.27%)	10.94 (12.16%)	13.43 (14.92%)	13.2 (14.9%)	13.2 (14.7%)
Range of Scores	21 to 83	5 to 87	16 to 85	18 to 86	15 to 87	17-84
Reliability (KR-20)	0.89	0.90	0.85	0.90	0.90	0.90
Reliability for Equivalent 90-item Test	0.89	0.90	0.85	0.90	0.90	0.90
Standard Error of Measurement	4.12 (4.58%)	4.23 (4.75%)	4.29 (4.77%)	4.20 (4.67%)	4.10 (4.6%)	4.3 (4.7%)

4.4 Chief Examiner's Report

The Chief Examiner for Civil Litigation reported that AETO feedback in relation to the assessment as a whole had been positive and encouraging, the majority of AETOs responding that the papers were rigorous, fair and just. This was seen as particularly positive as there were a number of new questions on Paper 1 and an entirely new rolling case scenario on Paper 2.

4.5 Independent Observer confirmation

The Independent Observer endorsed the proceedings in respect to Civil Litigation.

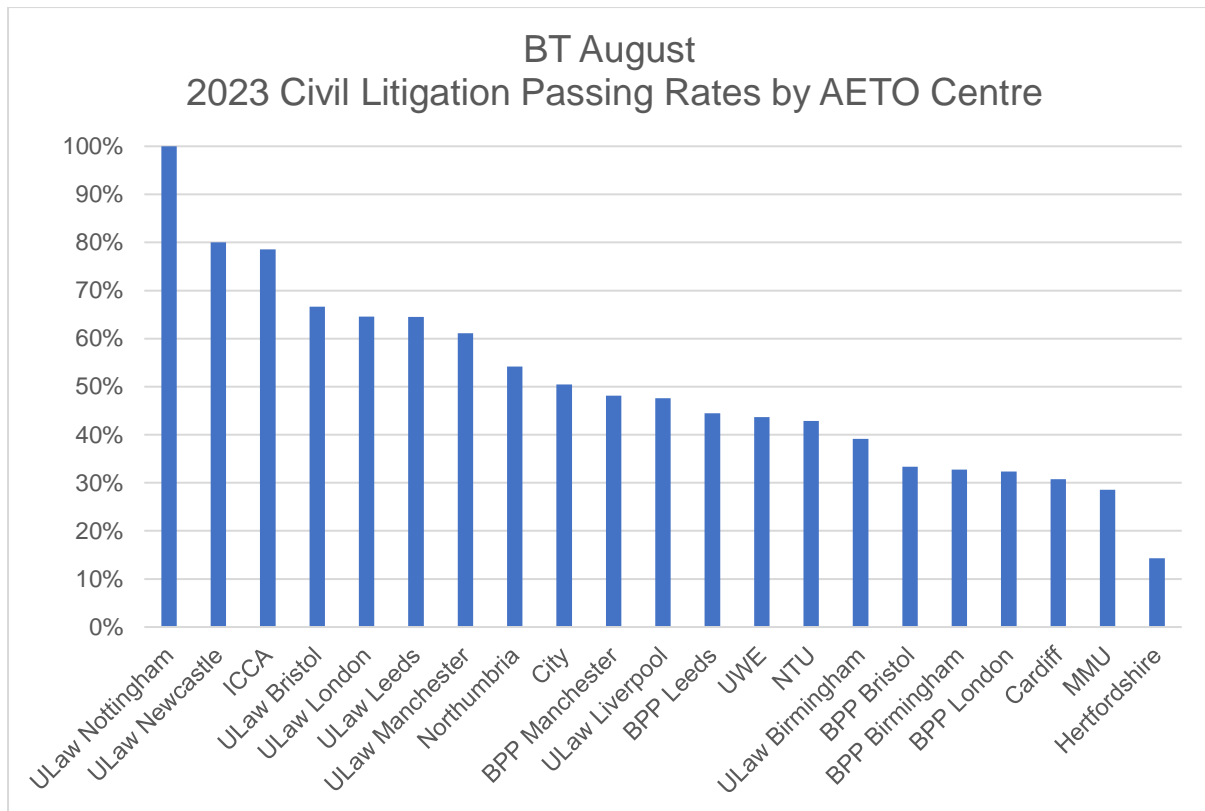
4.6 Civil Litigation post-intervention pass rate August 2023

All-AETO Post-Intervention	Civil Litigation December 2021	Civil Litigation April 2022	Civil Litigation August 2022	Civil Litigation December 2022	Civil Litigation April 2023	Civil Litigation August 2023
Number of Candidates	823	1517	790	929	1671	889
Passing Rate	53.6%	59.6%	46.2%	56.4%	59.8%	45.1%

The table above shows the all-AETO August 2023 post-intervention Bar Training cohort pass rate of 45.1% for Civil Litigation, based on a passing standard recommended to the Final Board (as a result of the standard setting process) of 50/89. The post-intervention passing rate is the lowest across the last six cycles (as was the case for Criminal Litigation for this sitting). Data presented to the exam boards for the August 2023 sitting showing the split between first sit and resit candidates for Civil Litigation revealed that 39% were attempting on a first sit basis (ie first ever attempt at the examination, or previous attempts discounted on the basis of accepted extenuating circumstances), and 61% as resit candidates (ie candidates who had previously failed the examination without mitigating circumstances having been submitted or accepted). The fact that a preponderance of candidates were resitting may have been a factor in driving down the overall

passing rate (the passing rate for first candidates in Civil Litigation was 57% compared to 38% for resitting candidates).

4.7 August 2023 Civil Litigation pass rates by AETO



4.7.1 The 21 AETO centre cohorts are ranged left to right in descending order of their August 2023 pass rates in the Civil Litigation assessment. Hence ULaw Nottingham had the highest August 2023 pass-rate at 100% and Hertfordshire the lowest at 14.3%. The data needs to be read in the context of cohort sizes (seven AETO centres having cohorts in single figures - ULaw Nottingham Bristol had only three candidates, and ULaw Newcastle had five), and other factors outlined at 1.2.6 (above).

4.7.2 Distribution of first sit candidates across the AETO centres for Civil Litigation August 2023 sitting

AETOs Ranked by % First Sit			
AETO	Cohort Size	No. First Sitting	% First Sit
ICCA	14	12	86%
UWE	55	29	53%
BPP London	244	122	50%
BPP Bristol	6	3	50%
BPP Manchester	79	39	49%
ULaw London	96	47	49%
BPP Leeds	9	4	44%
BPP Birmingham	55	24	44%
ULaw Leeds	31	12	39%
City	105	35	33%
MMU	7	2	29%
ULaw Birmingham	46	13	28%
Northumbria	24	4	17%
ULaw Liverpool	21	2	10%
Cardiff	13	1	8%
Hertfordshire	7	0	0%
NTU	42	0	0%
ULaw Bristol	9	0	0%
ULaw Manchester	18	0	0%
ULaw Newcastle	5	0	0%
ULaw Nottingham	3	0	0%
OVERALL	889	349	39.3%

First sit cohorts tend to be stronger than resit cohorts, and with this in mind it should be noted that, for the August 2023 Civil Litigation examination, only three AETO centres (BPP London, the ICCA, and UWE) had more first sit than resit candidates (the University of Hertfordshire cohort comprising only resit candidates). Seven AETO centres had no first sit candidates at all.

4.7.3 Comparison of first sit and resit candidate passing rates at each AETO for Civil Litigation August 2023 sitting

First Sit Pass Rates and Resit Pass Rates		
AETO	First Sit % Pass	Resit % Pass
BPP Birmingham	46%	23%
BPP Bristol	33%	33%
BPP Leeds	50%	40%
BPP London	45%	20%
BPP Manchester	72%	26%
Cardiff	0%	33%
City	66%	43%
Hertfordshire	N/A	20%
ICCA	75%	100%
MMU	0%	40%
Northumbria	75%	50%
NTU	N/A	43%
ULaw Birmingham	54%	33%
ULaw Bristol	N/A	67%
ULaw Leeds	75%	61%
ULaw Liverpool	50%	47%
ULaw London	79%	52%
ULaw Manchester	N/A	57%
ULaw Newcastle	N/A	80%
ULaw Nottingham	N/A	100%
UWE	45%	42%
OVERALL	57%	38%

Of the 15 AETO centres with both first sit and resit candidates attempting the August 2023 Civil Litigation assessment, three reported higher passing rates for their resit cohorts compared to their first sit cohorts, albeit some cohorts were very small, hence variances can be misleading (eg, Cardiff had only one first sit candidate, compared with 13 resit candidates).

4.7.4 Passing rates of first sit cohorts at each AETO for Civil Litigation August 2023 sitting

AETOs ranked by First Sit Pass Rate	
AETO	First Sit % Pass
ULaw London	79%
ICCA	75%
Northumbria	75%
ULaw Leeds	75%
BPP Manchester	72%
City	66%
ULaw Birmingham	54%
BPP Leeds	50%
ULaw Liverpool	50%
BPP Birmingham	46%
BPP London	45%
UWE	45%
BPP Bristol	33%
Cardiff	0%
MMU	0%
Hertfordshire	N/A
NTU	N/A
ULaw Bristol	N/A
ULaw Manchester	N/A
ULaw Newcastle	N/A
ULaw Nottingham	N/A

Six AETO centres failed to pass more than 50% of their first sit candidates in the August 2023 Civil Litigation assessment, although in some cases cohort numbers were very small.

4.8 Civil Litigation trend data – how AETO cohorts have performed over the last 6 sits

	Dec 21 % Pass	Apr 22 % Pass	Aug 22 % Pass	Dec 22 % Pass	Apr 23 % Pass	Aug 23 % Pass	Average over 6 sits
ICCA	89.3	81.8	92.9	86.5	84.2	78.6	85.5
Ulaw Leeds	42.9	69.8	56.0	75.0	66.7	64.5	62.5
ULaw Newcastle					44.4	80.0	62.2
Ulaw Bristol	100.0	61.1	40.0	33.3	66.7	66.7	61.3
Ulaw Nottingham	50.0	43.8	28.6	66.7	66.7	100.0	59.3
City	40.7	74.1	45.6	53.3	73.8	50.5	56.3
Cardiff	73.3	71.4	28.6	77.8	56.0	30.8	56.3
Ulaw London	43.1	65.7	40.1	47.5	63.5	64.6	54.1
Ulaw Manchester	42.9	63.0	50.0	57.1	45.5	61.1	53.2
BPP Manchester	56.2	51.0	45.9	58.9	56.2	48.1	52.7
Ulaw Liverpool		62.5	60.0	50.0	41.1	47.6	52.2
BPP Leeds	77.1	43.8	40.0	56.3	38.9	44.4	50.1
BPP London	51.9	48.2	60.1	52.7	53.8	32.4	49.9
Northumbria	26.7	51.6	44.4	42.9	65.2	54.2	47.5
BPP Bristol	68.4	28.6	55.6	62.5	22.2	33.3	45.1
UWE	31.7	52.3	38.1	53.3	48.6	43.6	44.6
BPP Birmingham	32.5	36.2	50.0	53.6	47.6	32.7	42.1
MMU	70.8	28.6	25.0	47.8	41.7	28.6	40.4
Ulaw Birmingham	22.2	50.0	29.4	36.7	61.8	39.1	39.9
NTU	43.5	41.5	20.6	20.8	37.8	42.9	34.5
Hertfordshire				23.1	33.3	14.3	23.6

4.8.1 AETO centre cohorts are listed in order of the average of their Civil Litigation passing rates across the last six sittings of the Bar Training centralised assessments. Note that Hertfordshire entered candidates for the first time in the December 2022 sit, and ULaw Newcastle for the first time in April 2023. Greyed out cells indicate other instances in the table above where an AETO centre did not enter any candidates. The calculation of AETO centre averages have been adjusted to reflect this. The data shows that the ICCA has achieved the highest average passing rate (85.5%), and Hertfordshire the lowest at 23.6%. The ICCA cohort has achieved the highest passing rate in four of the six sittings.

4.8.2 An alternative way of assessing the success of each AETO centre across all the sittings to date is to consider the cumulative total of candidates entered thus far and to compare this with the cumulative total number of candidates who have secured a pass.

BT Civil Litigation - December 2020 to August 2023 (9 sits)			
AETO	Total Number of Attempts	Total Number of Passes	% Pass
ICCA	311	276	88.7%
Ulaw Leeds	217	144	66.4%
City	1512	995	65.8%
Ulaw Bristol	86	56	65.1%
Cardiff	311	190	61.1%
ULaw Newcastle	14	8	57.1%
Ulaw Manchester	187	106	56.7%
Ulaw London	1007	552	54.8%
Ulaw Nottingham	54	29	53.7%
BPP Manchester	547	293	53.6%
Northumbria	322	161	50.0%
Ulaw Birmingham	391	190	48.6%
BPP London	1992	963	48.3%
BPP Leeds	178	85	47.8%
Ulaw Liverpool	100	47	47.0%
BPP Bristol	107	50	46.7%
UWE	558	256	45.9%
BPP Birmingham	359	151	42.1%
MMU	124	49	39.5%
NTU	337	119	35.3%
Hertfordshire	26	6	23.1%
TOTAL	8740	4726	54.1%

As can be seen from the above table 4,726 candidates have passed Bar Training Civil Litigation since the first sitting in December 2020, based on 8,740 attempts – thus the aggregate passing rate to date is 54.1%. There are 13 AETOs failing to achieve this average thus far, with a 65.6% range in cumulative passing rates between the strongest and weakest cohorts. There are ten AETO centres where, to date, less than 50% of Civil Litigation candidates attempting the assessment have secured a pass. Some of these candidates will have further opportunities to attempt the assessment depending on factors such as extenuating circumstances, and their previous number of unsuccessful attempts.

5. FURTHER COMPARATIVE ANALYSIS

5.1 Comparing performance in Criminal and Civil Litigation examinations

The post-intervention passing rates for the August 2023 sits in Criminal Litigation and Civil Litigation were fairly close to each other, at 39.9% and 45.1% respectively, with the Civil Litigation cohort having a slightly higher percentage of resitting candidates (60% vs 57%). There were 393 Bar Training candidates who attempted both Litigation assessments at the August 2023 sitting and the cross-tabulated outcomes, are as follows:

(a) All candidates attempting both papers:

	Pass Crime	Fail Crime
Pass Civil	93	55
Fail Civil	17	228

(b) All candidates attempting both papers as first sit candidates:

	Pass Crime	Fail Crime
Pass Civil	64	13
Fail Civil	2	47

(c) All candidates attempting both papers as resit candidates:

	Pass Crime	Fail Crime
Pass Civil	28	36
Fail Civil	13	163

The key cells (on the shaded background) are those which show the number of candidates who passed one subject but failed the other. If the two subjects were equally difficult to pass (making allowances for the fact that the Bar Training examinations in Civil and Criminal Litigation now have rather different formats), the number of candidates in these two cells should be approximately equal.

Although that all-candidate data (a) shows a wider discrepancy between the numbers in the shaded cells, given the diverse nature of the candidate group the data at (c) – all resit candidates – is probably the most reliable indicator out of the three data sets. The discrepancy between the shaded cells in that data set is within acceptable bounds, allowing for the factors outlined above, including the differing assessment formats for Civil Litigation as compared to Criminal Litigation.

5.2 Centralised assessment post-intervention pass rates compared December 2020 to August 2023

ALL-AETO Post-Intervention	Dec-20		Apr-21		Aug-21	
	Criminal Litigation	Civil Litigation	Criminal Litigation	Civil Litigation	Criminal Litigation	Civil Litigation
No of Candidates	383	407	1104	989	827	738
Passing Rate	59.8%	55.8%	46.2%	55.5%	42.4%	41.3%
Pass Standard	44/75	50/90	41/75	52/89	46/75	50/89
Reliability Score	0.91	0.91	0.86	0.90	0.85	0.88
ALL-AETO Post-Intervention	Dec-21		Apr-22		Aug-22	
	Criminal Litigation	Civil Litigation	Criminal Litigation	Civil Litigation	Criminal Litigation	Civil Litigation
No of Candidates	824	823	1653	1517	802	790
Passing Rate	55.9%	53.6%	63.7%	59.6%	52.5%	46.2%
Pass Standard	44/75	50/90	44/75	49/89	42/75	52/90
Reliability Score	0.87	0.89	0.89	0.90	0.85	0.85
ALL-AETO Post-Intervention	Dec-22		Apr-23		Aug-23	
	Criminal Litigation	Civil Litigation	Criminal Litigation	Civil Litigation	Criminal Litigation	Civil Litigation
No of Candidates	596	929	1583	1671	840	889
Passing Rate	49.8%	56.4%	65.6%	59.8%	39.9%	45.1%
Pass Standard	44/75	48/90	43/75	51/89	43/75	50/89
Reliability Score	0.89	0.90	0.90	0.90	0.87	0.9

Criminal Litigation candidate numbers for August 2023 were comparable to the previous two August sittings for the current assessment format, and there is evidence of a trend towards lower passing rates at the August sitting, possibly related to the higher proportion of resitting candidates. The variations in cohort size tends to reflect the course structures adopted by AETOs, which in turn determines when most candidates will be attempting each of the centralised assessments for the first time. Cohort numbers are also impacted by the approval of additional AETOs and AETO centres, three³ having been added since the first sitting of the current form of the centralised Litigation assessments in December 2020.

All Litigation	All Litigation	All Litigation	All Litigation
All sits	Dec	April	August
52.7%	55.2%	58.4%	44.6%
Criminal Litigation	Criminal Litigation	Criminal Litigation	Criminal Litigation
All	Dec	April	August
52.9%	55.2%	58.5%	44.9%
Civil Litigation	Civil Litigation	Civil Litigation	Civil Litigation
All	Dec	April	August
52.6%	55.3%	58.3%	44.2%

Overall passing rates across the nine sittings to date of the current format assessments show an average passing rate of 52.7%, with the average passing rate for Criminal Litigation (52.9%) being very marginally higher than that for Civil Litigation (52.6%). In terms of variation in passing rates across sittings, the April cohorts have, on average, been the strongest (58.4%) with the August cohorts the weakest (44.6%). The April 2023 passing rate for Criminal Litigation (65.6%) is the highest recorded for either subject across the nine sittings, and the August 2023 passing rate for Criminal Litigation (39.9%) is the lowest. It should be noted that this data shows averages of passing rates across sittings and does not reflect the volume of candidates at any given sitting (ie, passing rates at April sittings have the same weighting as passing rates at August sittings, despite the higher volume of candidates normally entered for an April sit).

5.3 August 2023 post-intervention pass rates for both Criminal Litigation and Civil Litigation by AETO

AETO	Civil Litigation	Criminal Litigation	AVERAGE
ULaw Nottingham	100%	100%	100.0%
ULaw Newcastle	80%	100%	90.0%
ICCA	79%	78%	78.2%
ULaw Leeds	65%	57%	60.6%
ULaw London	65%	54%	59.5%
ULaw Bristol	67%	43%	54.8%
BPP Leeds	44%	60%	52.2%
BPP Manchester	48%	53%	50.6%
ULaw Manchester	61%	38%	49.8%
Northumbria	54%	36%	44.9%
City	50%	39%	44.5%
ULaw Liverpool	48%	40%	43.8%
BPP Birmingham	33%	52%	42.1%
Cardiff	31%	53%	42.1%
NTU	43%	32%	37.2%
ULaw Birmingham	39%	35%	37.1%
UWE	44%	29%	36.5%
BPP London	32%	32%	32.0%
BPP Bristol	33%	11%	22.2%
MMU	29%	14%	21.4%
Hertfordshire	14%	0%	7.1%

5.3.1 AETO cohorts are listed in descending order of the average of their passing rates across the two August 2023 Litigation examinations. ULaw Nottingham therefore had the highest average passing rate (100%) and the University of Hertfordshire the lowest (7.1 %). Overall, 13 AETO centres failed to achieve an average passing rate of 50%. These figures need to be viewed with caution, however, as they are distorted, to some extent by low cohort

numbers in some cases. ULaw Nottingham and ULaw Nottingham each had only had six candidate entries across both assessments, whilst the ICCA in third place had 23.

5.3.2 An alternative way of looking at the extent to which AETO centres were successful in supporting their candidates in the August 2023 Litigation assessments is to aggregate the total number of candidates entered for each exam at an AETO centre and compare this with the aggregate number of candidates passing at that AETO centre.

AETO	Aug-23 Criminal Candidates	Aug-23 Civil Candidates	Total Aug-23 Instances of Assessment	Total Passing Criminal Aug-23	Total Passing Civil Aug-23	Total Aug-23 Candidates Passing an Exam	Overall % of Candidates Passing an Exam in Aug-23
ULaw Nottingham	3	3	6	3	3	6	100.0%
ULaw Newcastle	1	5	6	1	4	5	83.3%
ICCA	9	14	23	7	11	18	78.3%
ULaw Leeds	30	31	61	17	20	37	60.7%
ULaw London	103	96	199	56	62	118	59.3%
ULaw Bristol	7	9	16	3	6	9	56.3%
BPP Leeds	20	9	29	12	4	16	55.2%
ULaw Manchester	13	18	31	5	11	16	51.6%
BPP Manchester	49	79	128	26	38	64	50.0%
Northumbria	14	24	38	5	13	18	47.4%
City	114	105	219	44	53	97	44.3%
ULaw Liverpool	20	21	41	8	10	18	43.9%
Cardiff	15	13	28	8	4	12	42.9%
BPP Birmingham	33	55	88	17	18	35	39.8%
NTU	38	42	80	12	18	30	37.5%
ULaw Birmingham	40	46	86	14	18	32	37.2%
UWE	58	55	113	17	24	41	36.3%
BPP London	247	244	491	78	79	157	32.0%
MMU	7	7	14	1	2	3	21.4%
BPP Bristol	9	6	15	1	2	3	20.0%
Hertfordshire	10	7	17	0	1	1	5.9%
TOTAL	840	889	1729	335	401	736	42.6%

As the table above shows, ULaw Nottingham was the most successful AETO in terms of the percentage of candidates entered for any of the August 2023 examinations achieving a pass, in either examination, with a figure of 100%. At the other extreme, at the University of Hertfordshire, only 5.9% of its candidates managed to get through either exam. Out of 21 AETO centres, 12 failed to achieve a 50% progression rate calculated on this basis. The extent to which these outcomes reflect the impact of resitting candidates remains, to some extent, a matter of conjecture. If there is a correlation between lower passing rates and the number of resitting candidates, it might be reasonable to expect any AETO centre with an above average percentage of first sit candidates to be able to achieve a higher-than-average passing rate across both Litigation subjects taken together. On the basis that, taking both Litigation subjects taken together, the average proportion of first sitting candidates at each AETO centre for the August 2023 sitting was just over 41%, the outcomes for BPP Birmingham (45.5% first sitters – 39.8% pass

rate), BPP London (52.3% first sitters – 32% pass rate), and BPP Bristol (46.7% first sitters – 20% pass rate), might be regarded as disappointing (albeit candidate numbers at BPP Bristol were very small for August 2023).

5.3.3 Looking across the last nine cycles of Bar Training centralised Litigation assessments there is no compelling evidence to suggest AETO cohorts have found the Civil Litigation assessment more challenging than those in Criminal Litigation, although the outcomes for specific sittings are quite marked. The table below shows, for each AETO centre at each of the nine sittings for the current assessment format, the variance in passing rates between the two Litigation subjects. AETOs without cohorts for a sitting have blank data cells. The blue shading (negative) indicates that candidates have performed better on Crime than on Civil, hence, at BPP Birmingham in December 2020 the Civil Litigation passing rate was 3.6% below that for Criminal Litigation.

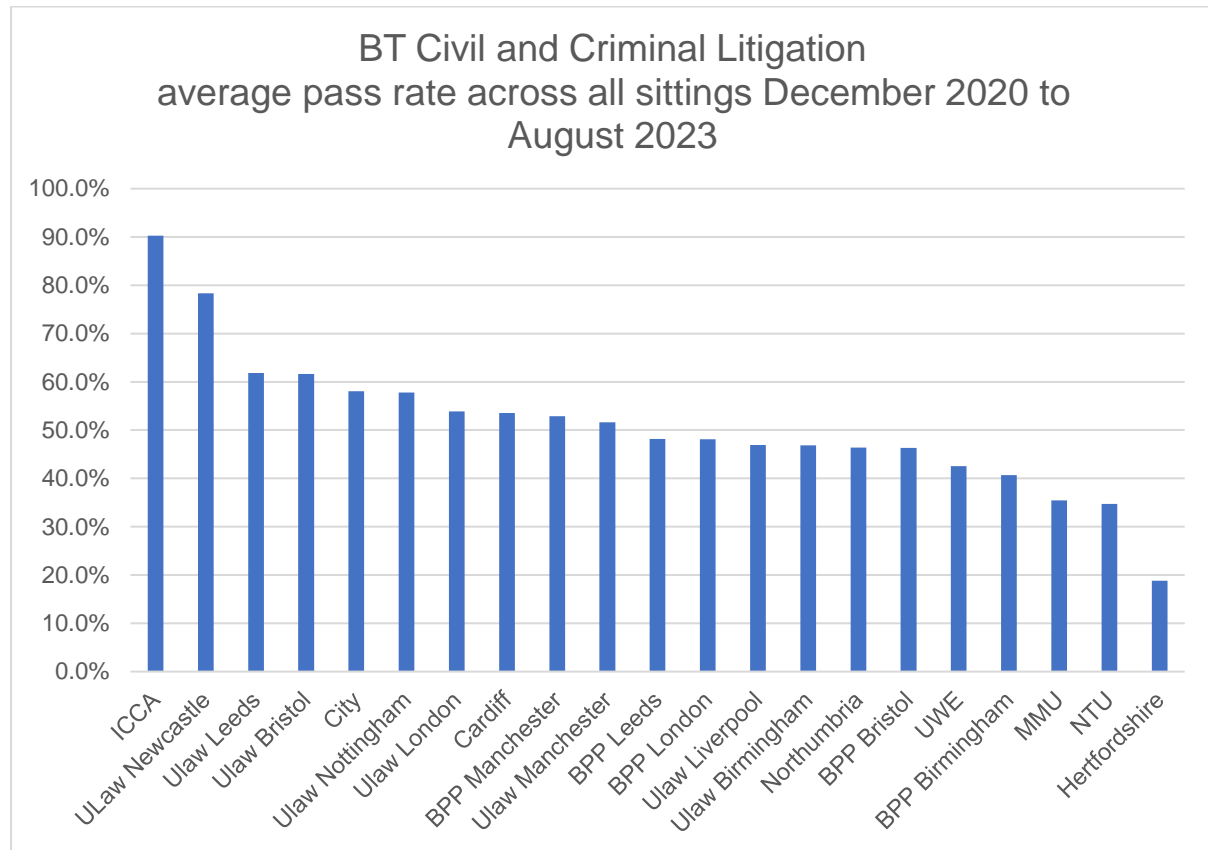
The biggest average differential is recorded by the ULaw Newcastle figure - 32% higher in Criminal Litigation (albeit across only 2 sittings). For those AETO centres with results across all nine sittings, the biggest differential is at BPP Bristol with a 6.7% better outcome in respect of Criminal Litigation.

	Dec-20	Apr-21	Aug-21	Dec-21	Apr-22	Aug-22	Dec-22	Apr-23	Aug-23	Average
BPP Birmingham	-3.6%	12.3%	7.8%	-14.0%	-13.8%	9.1%	0.8%	-21.2%	-18.8%	-4.6%
BPP Bristol	-2.6%	6.3%	12.1%	-0.8%	-11.4%	-1.6%		-77.8%	22.2%	-6.7%
BPP Leeds	-26.9%	20.6%	-26.7%	8.6%	-1.3%	-2.9%	-3.8%	-11.1%	-15.6%	-6.5%
BPP London	-3.7%	12.7%	-10.2%	-6.6%	7.6%	-1.2%	11.0%	-9.8%	0.8%	0.1%
BPP Manchester	-2.6%	16.1%	-16.1%	0.1%	-2.3%	-12.9%	13.2%	-8.4%	-5.0%	-2.0%
Cardiff	-2.0%	13.6%	0.7%	20.7%	-2.9%	-19.0%	17.8%	-27.8%	-22.6%	-2.4%
City	12.3%	13.7%	7.1%	-8.7%	3.0%	-5.5%	9.1%	-0.5%	11.9%	4.7%
Hertfordshire							3.1%	11.1%	14.3%	9.5%
ICCA	0.0%	6.7%	14.3%	-5.4%	-5.3%	-7.1%	-2.6%	-5.0%	0.8%	-0.4%
MMU	-13.3%	0.8%	9.1%	15.8%	-26.0%	-17.9%	-10.5%	16.7%	14.3%	-1.2%
Northumbria		3.8%	8.4%	3.6%	-12.5%	6.9%	-14.3%	-10.8%	18.5%	0.5%
NTU		-9.2%	4.6%	8.7%	-9.4%	1.8%	-16.7%	1.6%	11.3%	-0.9%
ULaw Birmingham		12.8%	9.2%	-17.8%	-20.5%	-6.3%	-2.2%	1.8%	4.1%	-2.4%
ULaw Bristol		-3.1%	-25.0%		-5.6%	0.0%	33.3%	-8.3%	23.8%	2.2%
ULaw Leeds		17.9%	7.9%	17.9%	-9.0%	-4.0%	0.0%	0.0%	7.8%	4.8%
ULaw Liverpool					-8.1%	10.0%	50.0%	-6.4%	7.6%	10.6%
ULaw London		0.1%	-5.3%	-7.6%	-8.2%	-13.3%	6.7%	-3.7%	10.2%	-2.6%
ULaw Manchester		21.5%	-2.3%	0.0%	-15.7%	5.6%	57.1%	-17.3%	22.6%	8.9%
ULaw Newcastle								-44.5%	-20.0%	-32.2%
ULaw Nottingham		-22.9%	-100.0%	0.0%	-27.7%	-4.8%	66.7%	-10.2%	0.0%	-12.4%
UWE		13.0%	5.5%	-7.3%	-5.1%	-19.5%	28.3%	0.3%	14.3%	3.7%
Average	-4.7%	7.6%	-5.5%	0.4%	-9.2%	-4.3%	13.0%	-11.0%	9.9%	

In the August 2023 sitting only five AETO cohorts performed more strongly in Criminal Litigation compared to Civil Litigation, a marked shift from April 2023 where the figure was 15 and August 2022 where the figure was 11 (out of 18 AETO centres).

5.4 AETO average passing rates since December 2020

An analysis of passing rates achieved by each AETO cohort in both Litigation subjects across all nine Bar Training Course examination sittings to date (adjusted to allow for the fact that some AETOs may not have had candidates for some sittings) shows the following:



The ICCA has the highest average passing rate across both Litigation subjects and all sittings to date at 90.2%, and Hertfordshire (entering candidates for the first time in the December 2022 sitting) the lowest at 18.8%. The ICCA is, thus far, some way ahead of the other AETO centres in terms of cohort performance, the gap between it and second placed ULaw Newcastle being 11.9% (the ULaw Newcastle figure itself needs to be seen in the context of this being that AETO cohorts' second sitting of these assessments). There are 11 AETO centres where the average passing rate across both Litigation subjects and all sittings to date is below 50%. Again, it is important to bear in mind the caveats flagged at 1.2.6 when considering these results.

5.5 Overall passing rates across both subjects December 2020 to August 2023

5.5.1 Cumulative passing rate to date disaggregated by AETO centre

BT Civil and Criminal Litigation December 2020 to August 2023			
AETO	Total No. of Attempts	Total No. of Passes	% Pass
ICCA	619	557	90.0%
ULaw Newcastle	24	17	70.8%
Ulaw Bristol	167	111	66.5%
Ulaw Leeds	454	293	64.5%
City	3159	2009	63.6%
Ulaw Nottingham	98	59	60.2%
Cardiff	634	379	59.8%
Ulaw Manchester	365	215	58.9%
Ulaw London	2030	1149	56.6%
BPP Manchester	1042	558	53.6%
Northumbria	591	309	52.3%
Ulaw Birmingham	789	398	50.4%
BPP Leeds	348	172	49.4%
BPP London	3786	1804	47.6%
Ulaw Liverpool	200	95	47.5%
BPP Bristol	204	95	46.6%
UWE	1195	527	44.1%
BPP Birmingham	676	292	43.2%
MMU	246	97	39.4%
NTU	665	237	35.6%
Hertfordshire	60	11	18.3%
TOTAL	17352	9384	54.1%

This table aggregates all the attempts by candidates at both the Criminal Litigation and Civil Litigation examinations across all nine sittings from December 2020 to August 2023. In total there have been 17,352 Bar Training candidate entries, of which 9,384 have been successful (54.1%). As can be seen, 12 AETO centres fall below this overall passing rate, with nine AETO centres failing to achieve a 50% passing rate overall in the centralised assessments since the introduction of the Bar Training course in 2020. Overall pass rates (derived by dividing the total number of passes by the total number of attempts) are not the same as the simple average of pass rates shown at 5.4, the data in the above table arguably giving a more accurate picture of how successful each AETO centre has been in supporting its candidates to pass the centralised Litigation assessments.

5.5.2 Cumulative passing rate disaggregated by AETO group – 9 sittings to date

The table below takes the data used for table 5.5.1 but aggregates the cumulative totals for the six University of Law centres and the five BPP centres, to produce an aggregate cumulative score for each of those AETOs across all their centres.

BT Civil and Criminal Litigation			
AETO	Total No. of Attempts	Total No. of Passes	% Pass
ICCA	619	557	90.0%
City	3159	2009	63.6%
Cardiff	634	379	59.8%
ULaw Group	4127	2337	56.6%
Northumbria	591	309	52.3%
BPP Group	6056	2921	48.2%
UWE	1195	527	44.1%
MMU	246	97	39.4%
NTU	665	237	35.6%
Hertfordshire	60	11	18.3%

Presenting the data this way shows that the ICCA remains the most successful AETO in terms of the percentage of candidates entering for a centralised assessment securing a pass, 26% ahead of the second placed AETO, City. Of the two largest AETOs, ULaw is comfortably ahead of BPP, although ULaw has not entered cohorts for all sittings. Five AETO groups have not, to date, managed to exceed the 50% overall success level for centralised Litigation assessments candidates.

6. BAR TRANSFER TEST RESULTS AUGUST 2023

The results for Bar Transfer Test ('BTT') candidates attempting the August 2023 BTT assessments were considered by the Litigation Subject Exam Boards and the Final Board. For the August 2023 sit, all BTT candidates attempted the same centrally assessed exam papers as the Bar Training Course candidates. See sections 3 and 4 (above) for details of the exam board discussion of interventions etc.

6.1 BTT Passing rates December 2021 to August 2023

Bar Transfer Test Post-Intervention	Dec-21		Apr-22		Aug-22	
	Criminal Litigation	Civil Litigation	Criminal Litigation	Civil Litigation	Criminal Litigation	Civil Litigation
No of Candidates	85	69	70	62	65	51
Passing Rate	46.0%	44.9%	43.0%	45.2%	38.5%	33.3%
Bar Transfer Test Post-Intervention	Dec-22		Apr-23		Aug-23	
	Criminal Litigation	Civil Litigation	Criminal Litigation	Civil Litigation	Criminal Litigation	Civil Litigation
No of Candidates	41	39	24	18	42	54
Passing Rate	29.3%	61.5%	50.0%	44.4%	23.8%	39.0%

For the August 2023 sitting the BTT candidate cohort achieved its lowest passing rate in Criminal Litigation across the last six sittings of the current assessment format (23.8%). The passing rate for Civil Litigation was the second lowest, at 39% across the six sittings. Somewhat counter-intuitively (given the difference in the format of the assessments), over the last six sittings the BTT cohort performance in Civil Litigation has been stronger than in Criminal Litigation – the average passing rate being 6.3% higher.

7. BPTC RESULTS AUGUST 2023

7.1 Unification of assessment regimes

7.1.1 There are no longer any discrete BPTC assessments, the final opportunity to take an ‘old style’ BPTC 75 MCQ Civil Litigation paper was in the April 2022 sit: see further <https://www.barstandardsBoard.org.uk/training-qualification/becoming-a-barrister/transitional-arrangements.html>

7.1.2 For background on arrangements for BPTC assessments (paper confirmation, standard setting, and grade boundaries) see previous Chair’s Reports: <https://www.barstandardsBoard.org.uk/resources/2019-summer-ceb-chair-s-report-pdf.html>

7.1.3 For the August 2023 sitting BPTC candidates attempted the same Criminal Litigation and Civil Litigation assessments as the Bar Training candidates. See sections 3 and 4 (above) for details of the exam board discussion of interventions etc.

7.2 BPTC Passing rates December 2021 to August 2023

BPTC All-Provider Post-Intervention	Dec-21		Apr-22		Aug-22	
	Criminal Litigation	Civil Litigation	Criminal Litigation	Civil Litigation	Criminal Litigation	Civil Litigation
No of Candidates	168	N/A	167	229	70	43
Passing Rate	38.7%	N/A	48.5%	31.0%	44.3%	25.6%
BPTC All-Provider Post-Intervention	Dec-22		Apr-23		Aug-23	
	Criminal Litigation	Civil Litigation	Criminal Litigation	Civil Litigation	Criminal Litigation	Civil Litigation
No of Candidates	45	31	36	57	29	37
Passing Rate	40.0%	45.2%	42.0%	53.0%	17.2%	30.0%

As the above table shows, the number of BPTC candidates is steadily declining, with a total of 66 candidate entries across the two Litigation assessments for the August 2023 sitting, compared with 93 for the April 2023 sitting. Understandably, given the cohort composition and distance in time between the delivery of tuition and attempting the assessment, the BPTC outcomes do not compare favourably with those for the main Bar Training cohort, passing rates being 22.7% lower in Criminal Litigation, and 15.1% lower in respect of Civil Litigation. The BPTC passing rate for Criminal Litigation in August 2023 was the lowest across the last six sittings, and the passing rate for Civil Litigation the second lowest across that period. The BPTC cohort appears to be significantly weaker than the BTT cohort (all of whom are transferring qualified lawyers) when passing rates are compared to those achieved by the main Bar Training cohort.

Professor Mike Molan
 Chair of the Central Examination Board
 30 October 2023