

**BAR
STANDARDS
BOARD**

REGULATING BARRISTERS

Pupillage/Work-Based Learning

Professional Ethics

Practice test

Mark scheme (including indicative content)

QUESTION: 1a

APPLICATION OF KNOWLEDGE Grades: Good; **Satisfactory**; Poor; Unacceptable

A **satisfactory** level of application of knowledge should contain evidence that the candidate understands:

- The application of CD5.
- Serious misconduct rules.
- The barrister should make reference to and or recognise that Peter may have committed an assault – physical or sexual.
- The commission of an assault of this nature is categorised as serious misconduct.
- Peter may be guilty of serious misconduct.
- The barrister needs to take practical steps to find out what happened – speak to Jessica.
- Based on what is said, the barrister needs to decide whether Peter has committed serious misconduct, and speak to Peter.
- If Peter has committed serious misconduct he needs to self-report to BSB.
- Barrister needs to report Peter to BSB (if Peter hasn't done so).
- [CD9 is engaged].

Moving upwards from satisfactory application of knowledge

A **good** answer may additionally contain reference to:

- Barrister needs to treat Jessica sensitively and reassure her that she will be supported if she makes a claim [protection against victimisation].
- Peter is in a position of power which may affect Jessica's wishes.
- Barrister needs to consider whether HoC needs to be informed, whether or not barrister takes view that Peter has committed serious misconduct.
- Barrister should speak to Peter again to find out what happened.
- CD9 is engaged in respect of Peter, Jessica and the Barrister.

Moving downwards from satisfactory application of knowledge

A **poor** answer will contain the following omission(s) or irrelevant/incorrect material, namely:

- Failure to recognise an assault has / may have taken place.
- An assault has / may have taken place which amounts to breach of CD5 and may amount to serious misconduct.
- Failure to recognise need to take practical steps to resolve issue (i.e. speak to Jessica and possibly Peter).
- Failure to identify need to report to BSB (Peter, Jessica and/or barrister have a duty to report serious misconduct).

An **unacceptable** answer will fail to address any of the key issues/provide an ethically unsound response which presents a significant risk to the lay client's interests and/or the administration of justice, including behaviour requiring reporting to the BSB, including:

- A statement that the barrister ignores the issue or provides "bad" advice to Jessica e.g. that she should forget about Peter's behaviour.
- A statement that the barrister should not interfere/it is a private matter between Peter and Jessica.

SAQ1a) INDICATIVE CONTENT COMFORTABLY EXCEEDING 'SATISFACTORY' ANSWER

Peter may be guilty of serious misconduct.

This is because his actions which I have witnessed during the party may amount to either a physical or sexual assault (gC96.2) or sexual harassment (gC96.2).

I need to be open and co-operative with my regulators (CD9). In this context and having witnessed what I believe to be an incident involving serious misconduct, I must ensure that I fully discharge my obligations.

In accordance with gC97, I must consider carefully all of the circumstances, to ensure that I am certain of the facts. I would therefore take steps to find out what happened, and this would include speaking with Jessica. When speaking to Jessica, I should indicate to her that Peter's actions may amount to serious misconduct which, as a barrister, I am bound to report (rC66, gC96.2). I should ask Jessica whether she is willing to report the apparent misconduct. I should reassure her that barristers must not victimise anyone for making an allegation of having been sexually harassed or physically assaulted or who witnesses sexual harassment and makes a report in good faith (rC69).

I should also speak further with Peter regarding what I witnessed and seek his explanation (gC97.2). Depending on what Peter tells me, I may need to invite him to consider self-reporting his behaviour to the BSB. If I conclude that there are reasonable grounds to believe that Peter has committed serious misconduct and it has not to my knowledge been reported to the BSB by Peter or anyone else, then I have a duty to report his actions to the BSB (gC98). Otherwise, I will be guilty of serious misconduct (gC96.8).

Peter's actions may constitute a breach of CD5 in that public confidence in Peter and/or the profession would be diminished were members of the public to become aware of his conduct, whether it amounts to physical or sexual assault or threatening behaviour because members of the public expect barristers to behave appropriately at all times.

I should also consider reporting the incident to my Head of Chambers given that this was a Chambers event and Peter's behaviour may amount to misconduct, even if not serious misconduct (gC102).

QUESTION: 1b**APPLICATION OF KNOWLEDGE** Grades: Good; **Satisfactory**; Poor; Unacceptable

A **satisfactory** level of application of knowledge should contain evidence that the candidate understands:

- The application of CD2, CD5 and CD6.
- The barrister has acted carelessly and not in the best interests of the client [potential evidence lost].
- The improper disposal of documents means that the barrister has been ‘negligent’ and has mismanaged documents containing personal data.
- Barrister should identify a breach of client confidentiality CD6.
- This is also GDPR/ DPA breach Barrister should report to ICO.
- Members of the public would expect a barrister to take care of documents relating to matters in which they were instructed (CD5).
- The barrister should explain to the client what has happened.
- The conference notes need to be provided to BSB (CD9).
- The barrister must comply with the BSB’s request and hand over the documents.

Moving upwards from satisfactory application of knowledge

A **good** answer may additionally contain reference to:

- The answer separates the destruction of bank statements and improper disposal of confidential documents.
- The potential of misleading the court (CD1), as per Peter’s assertions, is not substantiated.
- The answer identifies that conference notes are privileged but that the barrister is obliged to pass these to BSB if requested.
- The barrister has failed to provide a competent standard of work and service (CD7) as they did not act at all times in the client’s best interests, working when overtired and not managing their time or practice properly (CD10).
- The client could be advised to seek reassurance from solicitor regarding conference notes to avoid any perceived conflict of interest.

Moving downwards from satisfactory application of knowledge

A **poor** answer will contain the following omission(s) or irrelevant/incorrect material, namely:

- A failure to identify that the documents should be handed over to the BSB.
- The answer suggests there is no fault / or failure on behalf of the barrister in mismanaging confidential documents.
- Failure to identify Data Breach.

An **unacceptable** answer will fail to address any of the key issues/provide an ethically unsound response which presents a significant risk to the lay client’s interests and/or the administration of justice, including behaviour requiring reporting to the BSB, including:

- Failure to identify the duty to comply with the regulator CD9.
- A statement that the barrister does not have to respond to the BSB’s request.

SAQ1b) INDICATIVE CONTENT COMFORTABLY EXCEEDING 'SATISFACTORY' ANSWER

I should have been more careful when clearing my desk, irrespective of how tired I was. I should not have torn up the bank statement. Such an action is likely to diminish the trust and confidence which the public places in me and the profession, contrary to CD5, since members of the public would expect barristers to take care of documentation relating to the matters in which they were instructed, especially original documentation.

By tearing up the bank statement I have made myself vulnerable to a charge of knowingly or recklessly attempting to mislead the court (rC3.1), because this was an original document and I was being asked to advise if it should be disclosed. By tearing up and throwing confidential documents into the bin I have breached CD6, the duty to keep confidential those documents which attract legal professional privilege or are confidential (CD6, rC5 and rC15.5).

I have failed to follow the Confidentiality Guidance (See para 1, Confidentiality Guidance). I am a data controller under the Data Protection Act 2018 and must comply with the requirements of the Act and the UK GDPR in handling and storage of confidential material (Confidentiality Guidance).

The careless disposal of the bank statement amounts to an actual personal data breach. I must inform Mr Smith as soon as possible of the personal data breach and I must also undertake a risk assessment on the ICO website/inform the Information Commissioner about the breach.

I have also breached CD7, the duty to provide a competent standard of work and service to my client and CD2, the duty to act in the best interests of the client because, irrespective of how tired I was, I failed to take care when clearing my desk and dealing with work-related/confidential documents.

In response to the BSB, I must be open with my regulators (CD9) and so I must provide all such information to the BSB as it may, for the purposes of its regulatory function, from time to time require of me (rC64.1). I must respond to the BSB's request promptly (rC64.1) by sending them copies of all the requested documents. This includes the notes taken in conference with Mr Smith, even though they are subject to legal privilege.

I should advise Mr Smith that I am required to disclose the conference notes because the issue is a regulatory matter and I must comply with the requirement of my regulator. I should reassure him that disclosure of the notes in these circumstances does not infringe his right to privilege. Furthermore, I should also advise Mr Smith to seek advice and reassurance from another solicitor or barrister regarding disclosure of the conference notes because, given the circumstances, Mr Smith may perceive a conflict of interest between us regarding the disclosure of the notes. Such independent advice would serve to reassure him that I am simply complying with my regulations.

QUESTION: 2a

APPLICATION OF KNOWLEDGE Grades: Good; **Satisfactory**; Poor; Unacceptable

A **satisfactory** level of application of knowledge should contain evidence that the candidate understands:

- The application of CD2 and CD7.
- The barrister must identify that their actions will mislead the court if not corrected (CD1).
- The barrister should recognise the failure to put the description in cross-examination means the client's account is significantly different, and is open to challenge as a false account or a significant change in account [credibility].
- By omitting to put the description to the witnesses the barrister is not following his instructions from the lay client, and failing to provide a competent standard of work and service.
- The Barrister should clarify to the court that the fault is theirs, and not the client's.
- The Barrister should correct the position [and be honest with the client].
- The barrister should act in the client's best interests and take positive and practical steps to rectify the mistake, without regard for their own interests.

Moving upwards from satisfactory application of knowledge

A **good** answer may additionally contain reference to:

- Articulation of CD3/rC15.2 when outlining steps to be taken
- Explain to the judge in the absence of the jury the mistake and asking to recall the witness to ensure the court is not misled and the client's best interests are served.

Moving downwards from satisfactory application of knowledge

A **poor** answer will contain the following omission(s) or irrelevant/incorrect material, namely:

- Response suggests an application to recall the witness or rectify the situation should not be made e.g. in order to not waste the court's time.
- Failure to identify that the barrister has failed to act in accordance with instructions.

An **unacceptable** answer will fail to address any of the key issues/provide an ethically unsound response which presents a significant risk to the lay client's interests and/or the administration of justice, including behaviour requiring reporting to the BSB, including:

- Failure to identify that the barrister needs to take any action to rectify the situation.
- Failure to identify the risk to the client's interests.
- Statement that the barrister does not need to take any action/take responsibility for their own actions.

SAQ2a) INDICATIVE CONTENT COMFORTABLY EXCEEDING 'SATISFACTORY' ANSWER

I have a duty to act in the best interests of each client (CD2) and to provide a competent standard of work and service (CD7). By omitting to put the Defendant's case fully I have breached both of these duties, because my omission has led to the inaccurate impression that the Defendant's evidence about the assailant's description is a recent fabrication, which is clearly not in my client's best interests and falls below a competent standard of work and service.

I was or ought to have been aware of my client's instructions as to the description of the assailant in advance of the trial or, at the very least, before I cross-examined the prosecution witnesses. I should have put the case fully to each witness, insofar as it was relevant, that a short, dark-haired male committed the assault.

I must correct the position to ensure that the court (the judge and jury) is not misled (CD1 and rC3.1) and in complying with my duty to act with honesty and with integrity (CD3). By correcting the position, I will ensure that the administration of justice is not jeopardized by the court wrongly drawing an adverse inference from Jack's 'late' evidence about the description of the assailant.

I must do so, without regard to my own interests (rC15.2); thus, I must ignore any repercussions that there may be for me or for my reputation in these circumstances.

In practical terms, I should correct the position by explaining the position to the judge. This should first be in the absence of the jury and then in an acceptable format in front of the jury that I did in fact have those instructions but that through my own fault I omitted to put that part of my case to the prosecution witnesses. I should emphasise that the failure is in no way the responsibility of my client.

I should ask the judge to permit the witnesses, who gave evidence relevant to this point, to be recalled so that the description of the assailant can be put and so that the court is not misled and, further, so that I can act in the best interests of my client and provide a competent level of service.

I should also apologize to my client for the error and remind him of the chambers complaints procedure in the event that he wishes to complain about my conduct of the case.

QUESTION: 2b

APPLICATION OF KNOWLEDGE Grades: Good; **Satisfactory**; Poor; Unacceptable

	<p>A satisfactory level of application of knowledge should contain evidence that the candidate understands:</p> <ul style="list-style-type: none">• The application of CD2 and CD7.• The barrister does not know where Jack is or the reason for his absence.• Barrister must not mislead the court (CD1), whatever they decide to do next.• They must act in Jack’s best interests even if he is absent, so they should make reasonable enquiries to ascertain where he is.• [Ask instructing solicitor to try and contact Jack immediately].• Ask court for an adjournment (CD2 and/or CD7).• The barrister needs to comply with CD6 as the comments made previously were in confidence.• The barrister should remain [(Trial in absence guidance)].• They must present the best case permissibly possible in line with their instructions.		<p><i>Moving upwards from satisfactory application of knowledge</i></p>
			<p>A good answer may additionally contain reference to:</p> <ul style="list-style-type: none">• Steps taken to locate Jack including contact with instructing solicitor.• Recognition court may require the barrister to explain the steps taken to locate Jack.• Response identifies that CD1 does not require barrister to breach CD6 re comments from the previous evening.• Acting in the clients' best interests and not wasting the courts time CD1, the case could proceed in absence.• There is no requirement for the jury to have an explanation for Jack’s absence.
			<p><i>Moving downwards from satisfactory application of knowledge</i></p>
			<p>A poor answer will contain the following omission(s) or irrelevant/incorrect material, namely:</p> <ul style="list-style-type: none">• Failure to identify the application of CD1.• Failure to identify the application of CD2 or CD7.• Response suggests the barrister should disclose to the court what they were told by Jack. <p>An unacceptable answer will fail to address any of the key issues/provide an ethically unsound response which presents a significant risk to the lay client’s interests and/or the administration of justice, including behaviour requiring reporting to the BSB, including:</p> <ul style="list-style-type: none">• A statement that the barrister should withdraw from the case.

SAQ2b) INDICATIVE CONTENT COMFORTABLY EXCEEDING 'SATISFACTORY' ANSWER

As soon as I realised that Jack was not at court and the time for the resumption of the hearing was approaching I should have been making contact with him through whatever possible means. This would include trying to phone him or making contact with my instructing solicitor to see if they have heard from him, or if they can find out where he is.

I do not have instructions as to why Jack is not at court and there might be a valid reason for his absence. Bearing this in mind I must act in his best interests (CD2). If I do make contact with him and he is in fact refusing to attend then my instructing solicitor or I should seek to persuade him that attendance is in his best interests (CD2). I should ask the Judge for more time (or a short adjournment) so that I can find out where the Defendant is.

If I or my instructing solicitor cannot contact the client or he indicates he still intends not to attend court, I should not waste the court's time (rC3.3) since I have an overriding duty to the court (CD1) and so I should not request that the matter be further adjourned.

If I have to give an explanation to the judge for his absence, this should be done in the absence of the jury. I must not tell the Judge what my client said to me on the previous day (that he would not attend court today) because I must maintain my duty of confidentiality to the client (CD6). At the same time, I must bear in mind my duty to act with honesty and with integrity (CD3) and I must not mislead the court (CD1) when addressing Jack's absence with the judge.

With these duties in mind, if the Judge decides that the trial will now proceed in the absence of Jack, I should not make any excuse (true or otherwise) to the jury for his absence as I have no instructions to do this. I have a duty to act in the Defendant's best interests (CD2) and to provide a competent standard of work and service (CD7) so I should address the jury and put the Defendant's case in the best light when doing so. This will include commenting on all of the evidence, and its sufficiency to prove guilt, to the extent that this is consistent with my instructions. I should also ensure that the Judge directs the jury that they must not speculate about Jack's absence.

QUESTION: 3a	
APPLICATION OF KNOWLEDGE Grades: Good; Satisfactory ; Poor; Unacceptable	
<p>A satisfactory level of application of knowledge should contain evidence that the candidate understands:</p> <ul style="list-style-type: none"> • The application of CD1 and CD3. • CD2 is subject to CD1 and CD3. • The barrister needs to have credible material to plead fraud (rC9.2c). • In the absence of such material, which appears to be the case here, the barrister should refuse Harry's request, explaining why. • If Harry insists that barrister pleads fraud, barrister should cease to act. 	<p><i>Moving upwards from satisfactory application of knowledge</i></p> <p>A good answer may additionally contain reference to:</p> <ul style="list-style-type: none"> • If Harry signs a statement of truth, he is guilty of contempt of court. • That this is public access work does not make a difference to the position regarding pleading fraud. • Whilst the barrister doesn't need to believe the client, to draft the defence on this basis may amount to recklessly misleading the Court.. • Engagement and breach of CD5 if the barrister was to do as Harry asked.
	<p><i>Moving downwards from satisfactory application of knowledge</i></p> <p>A poor answer will contain the following omission(s) or irrelevant/incorrect material, namely:</p> <ul style="list-style-type: none"> • Failure to identify the engagement of CD1. • Failure to identify the engagement of CD3. • Failure to recognise that barrister is being asked to commit fraud. <p>An unacceptable answer will fail to address any of the key issues/provide an ethically unsound response which presents a significant risk to the lay client's interests and/or the administration of justice, including behaviour requiring reporting to the BSB, including:</p> <ul style="list-style-type: none"> • A statement that the barrister should follow Harry's instructions.

SAQ3a) INDICATIVE CONTENT COMFORTABLY EXCEEDING 'SATISFACTORY' ANSWER

I have a duty to act in the best interests of my client (CD2). However, I must remember that my duty to the Court in the administration of justice (CD1) and my duty to act with honesty and integrity (CD3) both take precedence over my duty to the client (CD2).

Harry's instructions to plead forgery within his defence to Delia's claim amount to making an allegation of fraud. I must not draft any document containing an allegation of fraud unless I have reasonably credible material which establishes an arguable case of fraud and clear instructions to do so (rC9.2.c). When drafting a defence, I do not have to believe my client (gC6), but in these circumstances it would be reckless to draft Harry's defence on the basis of these instructions without questioning him further, given some of his comments. There should be clear and unequivocal instructions that he did not sign the document, in which case I may plead fraud. However, if I take the view that he has no grounds for pleading fraud, I may not plead fraud. To plead fraud as Harry has asked without reasonably credible material is likely to diminish the trust and confidence that the public places in me and the profession (CD5) since members of the public would expect barristers not to plead serious allegations where the evidence does not support such allegations.

If Harry insists on my pleading the allegation without reasonably credible material, and despite my advice, I would have to return my instructions. This is because Harry's instructions require me to act other than in accordance with the provisions of the Handbook (rC21.6, rC25).

QUESTION: 3b	
APPLICATION OF KNOWLEDGE Grades: Good; Satisfactory ; Poor; Unacceptable	
<p>A satisfactory level of application of knowledge should contain evidence that the candidate understands and can apply:</p> <ul style="list-style-type: none"> • The engagement of CD2. • The application of rC26.5 – the barrister may withdraw from the case because of non-payment, or if client consents. • [The application of rC26.7 -- if the barrister decides to withdraw, and in the absence of the client’s consent, barrister should ask for permission to come off the record]. • The barrister should remind the client that he owes payment and give reasonable notice (overnight is not reasonable notice). • Given that the case is the next day, barrister should continue. 	<p><i>Moving upwards from satisfactory application of knowledge</i></p> <p>A good answer may additionally contain reference to:</p> <ul style="list-style-type: none"> • The application of CD1 and recognition that if the client is unrepresented, the trial will be adjourned. • It is unlikely that someone else can be instructed at such short notice. • If the barrister decides to sue for unpaid fees, this constitutes a conflict of interest.
	<p><i>Moving downwards from satisfactory application of knowledge</i></p> <p>A poor answer will contain the following omission(s) or irrelevant/incorrect material, namely:</p> <ul style="list-style-type: none"> • Failure to identify the applicability of CD2. • Failure to recognise the non-payment of fees. • Reference is made to the Cab-rank rule (this is public access work). <p>An unacceptable answer will fail to address any of the key issues/provide an ethically unsound response which presents a significant risk to the lay client’s interests and/or the administration of justice, including behaviour requiring reporting to the BSB, including:</p> <ul style="list-style-type: none"> • A statement that there is a duty to withdraw in the circumstances.

SAQ3b) INDICATIVE CONTENT COMFORTABLY EXCEEDING 'SATISFACTORY' ANSWER

I should remind Harry of the terms of engagement set out in my letter of instruction (rC125.1 and rC125.7).

I would be entitled to consider ceasing to act because I have not received payment when due in accordance with the terms agreed (rC26.5), but I should have given my client reasonable notice when requiring the non-payment to be remediated (rC26.5). As the hearing is taking place tomorrow I must ensure that the client is not adversely affected as I still have a duty to act in the best interests of my client and to provide a competent standard of service (CD2, CD7). There may not be time for him to engage alternate adequate legal assistance (gC83).

If I wish to cease to act, I need to obtain my client's consent to cease to act (rC26.2). If the client does not consent to my ceasing to act, since I am conducting litigation, I need to apply to the court to come off the record (rC26.7).

It is arguable that Harry is trying to make a fundamental change to the basis of my remuneration (gC87) and if I take this view, then I may consider the instruction to represent Harry at the hearing to be a new instruction on different terms. It is up to me whether I will accept this new instruction as the Cab-rank rule does not apply and this would be a new public access instruction. In this case, I would be no longer instructed, and I would not have to apply to come off the record.

In my discussions with Harry, I should be courteous and clearly explain the position to him.

QUESTION: 4a

APPLICATION OF KNOWLEDGE Grades: Good; **Satisfactory**; Poor; Unacceptable

	<p>A satisfactory level of application of knowledge should contain evidence that the candidate understands:</p> <ul style="list-style-type: none">• The application of CD1, CD2, CD4 and CD7.• Because of the absent witness an adjournment is required in order to ensure CD2 is complied with.• Barrister should explain the situation to the client.• To comply with rC20/CD4 the barrister needs to explain to solicitor that the lay client's interests take precedence over solicitor's interests/views; the barrister must not let fact that chambers receives a significant volume of work from that solicitor/impact upon solicitor influence his conduct of case.• The barrister should truthfully explain the witness's absence to the court (making clear the lay client is not at fault) (CD1).		<p><i>Moving upwards from satisfactory application of knowledge</i></p>
			<p>A good answer may additionally contain reference to:</p> <ul style="list-style-type: none">• The barrister should get the solicitor to check the availability of the witness, Kylie.• The lay client's/William's vulnerability taken into account when explaining the situation.• The barrister should speak to William the lay client in the presence of his appropriate adult.
			<p><i>Moving downwards from satisfactory application of knowledge</i></p>
			<p>A poor answer will contain the following omission(s) or irrelevant/incorrect material, namely:</p> <ul style="list-style-type: none">• Failure to identify the application of CD4.• Failure to identify the application of CD2 or CD7. <p>An unacceptable answer will fail to address any of the key issues/provide an ethically unsound response which presents a significant risk to the lay client's interests and/or the administration of justice, including behaviour requiring reporting to the BSB, including:</p> <ul style="list-style-type: none">• The answer states that the barrister should proceed with the trial without making an application for adjournment.• The answer states the barrister should mislead the court as to the reason for the witness being absent.

SAQ4a) INDICATIVE CONTENT COMFORTABLY EXCEEDING SATISFACTORY ANSWER

Raheem must act in the best interests of his lay client, William, as required by CD2. William's best interests take precedence over those of the professional client, the instructing solicitor, Stuart (gC36).

William is vulnerable because of his age and learning disability so, in order to ensure Raheem protects and promotes his best interests (CD2) and provides a competent standard of work and service (CD7) he must do what he reasonably can in terms William can understand (gC38.2) to advise William and to explain the court process and procedure. This will ensure William knows what is expected from him and from the court as he will not be familiar with legal proceedings and may find this difficult and stressful (gC41).

Kylie, a key defence witness, has not attended because Raheem's instructing solicitor did not warn her to attend. Whatever the professional client's views are, it is in William's best interests that she gives evidence in the trial as her account is important. Raheem must explain this to Stuart. As it is not William's fault that Kylie has not attended Raheem must explain to Stuart and William that he will need to apply to adjourn the case so she can attend as it is in William's best interests she is present to give evidence and that she is too far away to come today.

Raheem must maintain his independence (CD4, rC20) and not let Stuart's relationship with chambers affect the exercise of his professional judgement in the conduct of William's case. This includes maximizing his chances of success when applying for an adjournment by explaining to the court why Kylie has not attended, and that it is no fault of his lay client. In making his application Raheem must not mislead the court as to the reasons for Kylie's absence (CD1) and must act with honesty and with integrity (CD3). This would include, if necessary, providing a full and frank explanation about Stuart's error in failing to warn Kylie to attend.

If Raheem is acting in the best interests of his client and maintaining his independence he may consider whether William's interests would be better served by a change of solicitor (rC17).

QUESTION: 4b

APPLICATION OF KNOWLEDGE Grades: Good; **Satisfactory**; Poor; Unacceptable

A **satisfactory** level of application of knowledge should contain evidence that the candidate understands:

- The application of CD3 and CD2.
- The barrister is permitted to take the witness/clarification statement, and it is in the client's best interests to do so.
- The barrister may not prompt Florence about what happened when taking the witness statement.
- The barrister may not go through with Florence the kinds of questions which may be asked of her in court.
- The barrister can explain the court procedure to the witness.

Moving upwards from satisfactory application of knowledge

A **good** answer may additionally contain reference to:

- Getting Witness Service's assistance/arranging for Florence to see the court.
- The vulnerability of the witness is taken into account/the barrister must reassure or treat the witness sensitively.
- The need for special measures directions is considered (albeit this is the day of trial).
- The barrister must ensure that they do not ask closed or leading questions so to avoid influencing the evidence the witness will provide in her statement.

Moving downwards from satisfactory application of knowledge

A **poor** answer will contain the following omission(s) or irrelevant/incorrect material, namely:

- Failure to identify the applicability of CD3.
- Failure to recognise that the witness statement should be taken.

An **unacceptable** answer will fail to address any of the key issues/provide an ethically unsound response which presents a significant risk to the lay client's interests and/or the administration of justice, including behaviour requiring reporting to the BSB, including:

- Any statement that the barrister may coach, rehearse or practice the evidence with the witness, amounting to a breach of CD3.

SAQ4b) INDICATIVE CONTENT COMFORTABLY EXCEEDING SATISFACTORY ANSWER

Raheem must act in the best interests of his lay client, Steven, so when dealing with a defence witness such as Florence he must do his best to obtain sufficient relevant evidence so he can make an informed choice as to what use, if any that evidence will be in presenting Steven's case. One such choice is if he should call her at all.

Raheem finds that Florence's statement is limited, but his lay client believes she can give relevant and admissible evidence that would assist Raheem to present his case properly.

There is no prohibition on Raheem taking a further statement or proof of evidence from Florence (Investigating and Collecting Evidence and Taking Witness Statements Guidance) He can also clarify issues with her, but he needs to consider how he approaches his task as he must act with honesty and integrity (CD3) and guard against prompting, coaching or asking questions that are closed and leading. If he were to rehearse the questions he will ask or practise testing the evidence with her as she has suggested this would be a breach of CD3. He must not encourage Florence to give evidence which is misleading or untruthful (rC9.3 & rC9.4) as this will mislead the court.

As Florence is a nervous witness and vulnerable because of her age Raheem should put her at ease by explaining the process of the trial, explaining how she can refresh her memory from her statement and he could arrange for her to see the court room, or ask for the assistance of witness service, who deal with both prosecution and defence witnesses at court.

QUESTION: 5a**APPLICATION OF KNOWLEDGE** Grades: Good; **Satisfactory**; Poor; Unacceptable

A **satisfactory** level of application of knowledge should contain evidence that the candidate understands:

- [CD2- the need to act in the client's best interests as instructions have been accepted].
- [CD7- the duty to provide the client with a competent standard of work and service].
- The filing and/or issuing a Claim Form amounts to conducting litigation.
- Conducting litigation is a reserved legal activity.
- A barrister needs an extension to their practising certificate to conduct litigation.
- The barrister does not have a litigation extension and therefore is not authorised to conduct litigation.
- Therefore, the barrister must not file the claim form on behalf of the client.
- The barrister should advise the client urgently to get the Claim Form filed e.g. by instructing a solicitor to do so, or arranging for someone else to do so on his behalf.

Moving upwards from satisfactory application of knowledge

A **good** answer may additionally contain reference to:

- Filing the Claim Form without a litigation extension is a criminal offence (LSA 2007).
- If the barrister were to file the Claim Form it would amount to serious misconduct.
- CD5 would be breached as the public would not expect barristers to act outside the scope of their practice.
- It would also be a breach of CD10 in that the barrister would have failed to manage his practice in accordance with his legal and regulatory obligations.
- The barrister should consider whether client's best interests would be served by instructing a solicitor who can conduct litigation on his behalf, particularly given the client's frequent absences abroad (rC123).
- The specific need to act with urgency arises as the limitation period is due to expire.
- The barrister could offer advice to the client as to the completion/ contents of the Claim Form (it is currently in draft form).

Moving downwards from satisfactory application of knowledge

A **poor** answer will contain the following omission(s) or irrelevant/incorrect material, namely:

- A failure to recognise that the issuing of a Claim Form amounts to conducting litigation.
- A failure to identify that a barrister needs an extension to their practising certificate in order to conduct litigation.
- A failure to advise the client that he needs to find an alternative means of issuing the Claim Form as a matter of urgency.

An **unacceptable** answer will fail to address any of the key issues/provide an ethically unsound response which presents a significant risk to the lay client's interests and/or the administration of justice, including behaviour requiring reporting to the BSB, including:

- A statement that the barrister can/ should issue the Claim Form on behalf of the client.

SAQ5a) INDICATIVE CONTENT COMFORTABLY EXCEEDING 'SATISFACTORY' ANSWER

I must not file the Claim Form on behalf of Faisal (rS6), as this would amount to conducting litigation (Code Guidance document 'Guidance on Conducting Litigation' paras 3 & 5 and Legal Services Act 2007). In order to conduct litigation, I would need an extension to my practising certificate, which I do not have. Although I am public access qualified, this is not the same thing as conducting litigation. As such I am not authorised to file the Claim Form.

As conducting litigation is a reserved legal activity under the Legal Services Act 2007, I would be committing a criminal offence if I did as Faisal asked and filed the Claim Form on his behalf. I would also be acting outside the scope of my practice, as I do not have the necessary litigation extension, and this would therefore amount to a breach of CD10, the duty to manage my practice competently.

I have already accepted the instructions, and as such have a duty to act in Faisal's best interests (CD2) and to provide him with a competent standard of service (CD7). As such, and given the impending expiry of the limitation period, I should ensure that I advise Faisal as a matter of urgency that I will not be able to file the Claim Form on his behalf, for the reasons set out above. I should also advise him that in order to protect his position in respect of limitation he should file the Claim Form himself, or if he cannot do so personally, that he should arrange for someone else to do it on his behalf.

QUESTION: 5b

APPLICATION OF KNOWLEDGE Grades: Good; **Satisfactory**; Poor; Unacceptable

A **satisfactory** level of application of knowledge should contain evidence that the candidate understands:

- Jamie has failed to be open and cooperative with his regulator (CD9).
- Jamie also had a duty to cooperate with the Legal Ombudsman (rC71).
- Jamie should have responded promptly to the BSB's request, and in any event within the timescale provided.
- Jamie should have reimbursed Jeevan's fees and paid the compensation as soon as he had exhausted all legal avenues of challenge.
- [The fact that Jamie still felt unfairly treated is irrelevant to his duty to comply with the order.]

Moving upwards from satisfactory application of knowledge

A **good** answer may additionally contain reference to:

- Engagement and breach of CD10 – that Jamie has failed to manage his practice competently as he has not compiled with his legal and regulatory obligations/ has deliberately failed to pay.
- CD9 includes an obligation to cooperate with the Legal Ombudsman.
- CD3 is engaged as Jamie's actions (wilfully refusing to comply with the order/ reimburse Jeevan) lack integrity.
- CD5 is also engaged as members of the public would not expect barristers to act in this way.
- Jamie is not absolved of his duty to respond to the BSB on the basis that he assumed they would know the details from the LO.

Moving downwards from satisfactory application of knowledge

A **poor** answer will contain the following omission(s) or irrelevant/incorrect material, namely:

- A failure to identify that Jamie has failed to be open and cooperative with his regulator, in breach of CD9.
- A failure to identify that Jamie had a duty to respond promptly to the BSB's request, and in any event within the timescale provided.
- A failure to identify that Jamie should have reimbursed Jeevan's fees and paid the compensation as soon as he had exhausted all legal avenues of challenge.

An **unacceptable** answer will fail to address any of the key issues/provide an ethically unsound response which presents a significant risk to the lay client's interests and/or the administration of justice, including behaviour requiring reporting to the BSB, including:

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SAQ5b) INDICATIVE CONTENT COMFORTABLY EXCEEDING 'SATISFACTORY' ANSWER

In failing to comply with the Legal Ombudsman's (LO) order, Jamie has failed in his duty to provide all reasonable assistance required of him by the LO. His refusal to pay the monies owed is a failure to co-operate. It also amounts to a breach of CD10, the duty to take reasonable steps to run his practice competently, as in deliberately refusing to pay, Jamie has failed to comply with his legal and regulatory obligations. In addition to the above, Jamie is in breach of CD5, the duty not to behave in a way that undermines the public trust and confidence in the Bar, as members of the public would expect a barrister to comply with determinations of the LO. Jamie has also failed to act with honesty/ integrity (CD3) in refusing to reimburse and compensate Jeevan in accordance with the LO's order.

With regard to the BSB's enquiry, Jamie has breached CD9, the duty to be open and cooperative with his regulator, as he has failed to respond promptly, or at all. This also amounts to a further breach of CD5, since members of the public would expect barristers to respond to enquiries made by their regulator.

Once Jamie had exhausted all of his legal challenges in relation to the LO's determination, he should have paid the sums ordered to Jeevan. The fact that Jamie still felt unfairly treated is irrelevant to his duty to comply with the order. The fact that Jamie assumed that the BSB would know about the matter from the LO is no excuse for his failure to respond to them within the timetable set. Jamie should have therefore responded to their enquiry within the five-week period given.

QUESTION: 6a

APPLICATION OF KNOWLEDGE Grades: Good; **Satisfactory**; Poor; Unacceptable

<p>A satisfactory level of application of knowledge should contain evidence that the candidate understands:</p> <ul style="list-style-type: none">• The application of CD3 - the barrister has lied to the client as to the reason that the orders were not made.• The barrister's actions in lying to the client are likely to diminish the trust and confidence that the public places in the profession (CD5).• Once the barrister realised his mistake he should have sought to rectify it before leaving court.• The barrister should now contact the client and tell them the truth about the failure to apply for the orders.• The barrister should self-report to the BSB since dishonesty amounts to serious misconduct.	<i>Moving upwards from satisfactory application of knowledge</i>
	<p>A good answer may additionally contain reference to:</p> <ul style="list-style-type: none">• In failing to make the applications as instructed, the barrister has breached CD2 and CD7.• That the barrister's personal views and sympathy for the client are irrelevant to the matter, and in any event were not a reason for his failure to make the applications (he simply forgot).• That the barrister must take steps to rectify his breaches, and that these must be taken regardless as to the potential consequences to himself (rC15.2).• Recognition that in raising the matter before leaving the court, and asking for it to be dealt with there and then, the barrister could have avoided the need for a further hearing, and thus avoiding wasting the court's time/ incurring further costs.• That the barrister will need to provide the client with details of chambers' complaints procedure and information regarding the procedure for complaining to the Legal Ombudsman.
	<i>Moving downwards from satisfactory application of knowledge</i>
	<p>A poor answer will contain the following omission(s) or irrelevant/incorrect material, namely:</p> <ul style="list-style-type: none">• A failure to identify that there has been a breach of CD3 (lying to the client).• A failure to recognise that barrister should have raised the issue before leaving court.• A failure to identify that the barrister must now take steps to rectify his breach (contacting the client to tell them the truth about the failure to apply for the orders). <p>An unacceptable answer will fail to address any of the key issues/provide an ethically unsound response which presents a significant risk to the lay client's interests and/or the administration of justice, including behaviour requiring reporting to the BSB, including:</p> <ul style="list-style-type: none">• A statement that there is no need to self-report to the BSB for serious misconduct.

SAQ6a) INDICATIVE CONTENT COMFORTABLY EXCEEDING SATISFACTORY ANSWER

The ethical issues arising in this question relate primarily to my duty under CD2, acting in my client's best interests and CD7, the duty to provide a competent standard of work and service, as well as CD3, the duty to act with honesty and with integrity. CD5, the duty not to behave in a way which is likely to diminish the trust and confidence which the public holds in me or the profession, also has a bearing in this situation.

I should have applied for a forfeiture order and costs but failed to do so. I have therefore breached CD2 and CD7 because in failing to apply for the orders I have not acted in the best interests of the local authority, my client, and have failed to provide a competent standard of service. The failure to let the local authority know of the result of the hearing is also a breach of CD7.

I have a duty to take reasonable steps to mitigate any breaches of the handbook and to do so regardless of the consequences to myself (rC15.2). I therefore should have taken steps to remediate the breaches by letting the court and my opponent know as soon as I realised my mistake and certainly before the parties left the court building. I should at least have contacted the court office when leaving the building to alert the judge to the issue.

I have compounded matters by lying to my client and this is a clear breach of CD3 because this duty means that I should act with honesty and with integrity at all times and should not knowingly mislead anyone and this includes my client.

Lying to a client would also be breach of CD5 because the public expects barristers to be honest and to act with integrity towards everyone and this includes their clients.

I should contact the local authority and tell the truth about my failures to apply for the forfeiture and costs orders. I should also explain the complaints procedure, including the procedure for complaining to the Legal Ombudsman. I should also report myself to the BSB for having committed serious misconduct (gC96.1).

QUESTION: 6b

APPLICATION OF KNOWLEDGE Grades: Good; **Satisfactory**; Poor; Unacceptable

A **satisfactory** level of application of knowledge should contain evidence that the candidate understands:

- The overriding duty to the court, which includes the duty not to mislead (CD1).
- The duty of confidentiality (CD6) means the barrister cannot disclose the Paris convictions to the prosecution or court without the client’s consent.
- To suggest that the client has no prior convictions for violence would mislead the court, and the barrister must not do this.
- The barrister should therefore not adduce the client’s previous convictions to show that she has no propensity for violence.
- The barrister will need to advise the client that he cannot adduce her previous convictions to show that she has no propensity for violence, explaining why that is the case.
- The barrister may need to consider their position based on the client’s response.
- If the client accepts the barrister’s advice that the submission cannot be made to the court, the barrister may continue to act for the client.
- If the client insists that the barrister makes the submission to the court as suggested, the barrister must cease to act, explaining why to the client.

Moving upwards from satisfactory application of knowledge

A **good** answer may additionally contain reference to:

- To make assertions regarding the client’s convictions that he knows to be untrue would put the barrister in breach of CD3.
- The trust and confidence that the public has in the profession would be diminished if the barrister were to knowingly mislead the court in this way (CD5).
- While the barrister owes a duty to the client to act in her best interests (CD2), his overriding duty is to the court (CD1).
- The duty to the court under CD1 does not require a barrister to act in breach of his duty to keep the client’s affairs confidential (rC5).
- It is the prosecution’s duty to ensure that the previous convictions are accurate; there is no duty on the barrister to disclose the fact that they are not up to date.
- There is either no reference to mandatory sentencing at all, or only briefly refers to the same to discount it from being relevant due to the scenario being set in a trial context.

Moving downwards from satisfactory application of knowledge

A **poor** answer will contain the following omission(s) or irrelevant/incorrect material, namely:

- The candidate’s answer focuses on mandatory sentencing, despite the scenario being set in a trial context.
- The candidate fails to identify that the barrister owes an overriding duty to the court, which includes the duty not to mislead.
- The candidate suggests that this is a scenario in which the barrister cannot continue to act for the client unless the client agrees to the disclosure of the existence of the Paris convictions.

An **unacceptable** answer will fail to address any of the key issues/provide an ethically unsound response which presents a significant risk to the lay client’s interests and/or the administration of justice, including behaviour requiring reporting to the BSB, including:

- A statement that the barrister should proceed in making the submission that the client has no propensity for violence.

SAQ6b) INDICATIVE CONTENT COMFORTABLY EXCEEDING SATISFACTORY ANSWER

This situation raises ethical issues involving the application of CD1, my duty to the Court in the administration of justice, CD2, my duty to act in Miss Dickson's best interests and CD6, my duty to keep the affairs of Miss Dickson's confidential.

I must explain to Miss Dickson that although I have a duty to act in her best interests, I also have an overriding duty to the court in the administration of justice and I therefore must not knowingly or recklessly mislead the court (rC3.1) by suggesting that she does not have any previous convictions for violence. Considering the new discovery, I will therefore be limited in what I can say about her character evidence as I must not mislead the court. I cannot therefore assert that she does not have any previous convictions for violence when I am aware of the Paris conviction. I would advise her that my duty of confidentiality to keep her affairs confidential under CD6 means that I must not disclose the conviction without her consent to do so.

Although the Prosecution (and the Court therefore) seem to be unaware of the recent Paris conviction, I have no obligation to disclose it to the court – rC5 is active here as my duty to the court does not require me to breach my duty of confidentiality to my client. I should add that this is not a situation which mandates me to make a disclosure.

Regarding the proceedings, I may therefore continue to act for Miss Dickson subject to how she responds to the advice I have just given her. If she insists that I must put forward the character evidence as initially planned, I must cease to act and explain to her my reason for doing so (rC25 and rC21.6).