BAR STANDARDS BOARD

REGULATING BARRISTERS

THE BAR STANDARDS BOARD
CENTRAL EXAMINATIONS BOARD
CHAIR'S REPORT

Bar Training
Spring 2021 Sitting

EXECUTIVE SUMMARY

The new vocational training component (hereby referred to as Bar Training) is the successor to the Bar Professional Training Course (BPTC). Bar Training saw its first intake of students across a number of course providers in September 2020. Depending on the course structure offered at each Authorised Education and Training Organisation (AETO), candidates had their first opportunity to attempt the centralised assessments in Civil and Criminal Litigation in Winter 2020. This report presents the result for the second iteration of examinations attempted by candidates in April 2021 (the Spring 2021 sit). The confirmed post-intervention outcomes of the Spring 2021 Bar Training examinations are as follows:

	April 2021	December 2020
Civil Litigation		
Number of candidates	989	407
Passing rate	55.50%	55.80%
Criminal Litigation		
Number of candidates	1104	383
Passing rate	46.20%	59.80%

In comparing results across the two iterations of assessment it should be noted that for Winter 2020, nine AETO centres presented cohorts of candidates for assessment. For Spring 2021 the figure was 18 AETO centres, which explains why there were significantly more candidates for the Spring 2021 sitting compared to Winter 2020.

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, Remedies[1] & 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 (i.e., 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. No changes were made to the format of assessment, but the setting of the assessments was undertaken independently of the Providers by a team of CEB examiners appointed by the BSB.

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[1] NB Remedies was later removed from the syllabus

1.2 The 2011/12 to 2015/16 assessment formats

From the 2011/12 academic year, up to and including the 2015/16 academic year, candidates in each of the three centrally assessed subjects were required to attempt an MCQ test, and an SAQ test. The Civil and Criminal Litigation assessments each comprised a paper requiring candidates to attempt 40 MCQs and five SAQs in three hours. The Professional Ethics assessment required candidates to attempt 20 MCQs and three SAQs in two hours. All questions in all papers were compulsory and the pass mark in each part of each paper was fixed at 60%. All MCQ papers were marked electronically using Speedwell scanning technology. All SAQ papers were marked by teaching staff at the relevant BPTC Provider institution, with marks being remitted to the CEB for processing. The marks for the MCQ and SAQ elements of each of the papers were aggregated to provide each candidate with a combined mark for each subject. Candidates were required to achieve the pass mark of 60% in both elements of each assessment, there being no scope for the aggregation of marks below 60% between MCQ and SAQ scores to achieve the minimum 60% pass mark overall.

1.3 The assessment formats for BPTC candidates from Spring 2017

1.3.1   Acting on the recommendations of the BSB's Education and Training Committee, from the Spring 2017 sitting, the CEB introduced significant changes to the format and marking processes for the centralised assessments on the BPTC. Both the Civil Litigation and Criminal Litigation assessments were modified to become three-hour papers comprising 75 MCQ and Single Best Answer (SBA) questions. This change meant that the answers for the entire paper in each subject could be marked electronically using Speedwell scanning technology. The assessment in Professional Ethics became a two-hour paper (increased to two hours and thirty minutes from the Spring 2018 sit) comprised of six SAQs, the marking being undertaken by a team of independent markers appointed by the BSB.

1.3.2   2017 was also the first year in which Bar Transfer Test (BTT) candidates had to take centralised assessments in the three knowledge areas rather than assessments set by BPP University, the institution appointed by the BSB to provide BTT training. For the Spring 2017 sitting, BTT candidates thus sat the same Civil Litigation and Criminal Litigation papers as the BPTC cohort on the same dates, and (for logistical reasons relating to the Spring 2017 assessment) a separate Professional Ethics paper. For the Spring 2018 sit, BTT candidates attempted the same Professional Ethics assessment as the BPTC candidates (see section 6 for BTT results). Unless otherwise specified, cohort performance data analysed in this report, and any assessment reliability analysis is based on the results achieved by BPTC candidates only.

1.4 Future Bar Training

1.4.1   As part of the Future Bar Training reforms of the vocational stage of qualification as a barrister, a new vocational training component, Bar Training, was introduced to replace the BPTC for the start of the 2020/21 academic year. As was the case with the BPTC, the tuition is delivered by Authorised

Education and Training Organisations ('AETOs'). Criminal Litigation and Civil Litigation (including dispute resolution) are centrally examined, under the auspices of the CEB, by the BSB. 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 compromised of 50 MCQ and SBA questions. For Civil paper 2, candidates have two and a half hours to attempt 40 questions, the first 5 are stand-alone MCQ and/or SBA questions, and the remaining 35 take the form of rolling case scenarios – typically between 5 and 7 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 2.[2]

1.4.2 Professional Ethics is no longer centrally assessed as part of the Bar Training Course. A grounding in Professional Ethics is provided by each AETO as an element of its Bar Training course and is assessed locally.[3]

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[2] BPTC candidates do not attempt the Civil 1 or Civil 2 papers but will continue to attempt a post-2017 BPTC format Civil Litigation assessment until BPTC examinations are phased out.

[3] From 2022, a more comprehensive assessment of Professional Ethics than that required by the vocational component of Bar Training will be undertaken during pupillage by those called to the Bar following successful completion of the Bar Training course. This work-based learning assessment of Professional Ethics will be administered on behalf of the BSB by the CEB.

1.5 Table of Bar Training Course AETO centres Spring 2021

Provider	Centre	Students sitting in December 2020	Candidates attempting in April 2021
BPP University	London	Yes	Yes
BPP University	Leeds	Yes	Yes
BPP University	Manchester	Yes	Yes
BPP University	Birmingham	Yes	Yes
BPP University	Bristol	Yes	Yes
Cardiff University	Cardiff	Yes	Yes
City University	London	Yes	Yes
Inns of Court College of Advocacy ('ICCA')	London	Yes	Yes
University of Law ('ULaw')	Birmingham	No	Yes
University of Law ('ULaw')	London	No	Yes
University of Law ('ULaw')	Leeds	No	Yes
University of Law ('ULaw')	Bristol	No	Yes
University of Law ('ULaw')	Manchester	No	Yes
University of Law ('ULaw')	Nottingham	No	Yes
University of the West of England ('UWE")	Bristol	No	Yes
University of Northumbria ('UNN')	Newcastle	No	Yes
Manchester Metropolitan University ('MMU')	Manchester	Yes	Yes
Nottingham Trent University ('NTU')	Nottingham	No	Yes

Candidates have three opportunities a year to attempt the centralised Bar Training examinations: April, August, and December.

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 Examiners for each subject), 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/dde209b7-529d-4354-bbbfd992577685f9/20201117-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 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 (for example, public transport strikes, bomb alerts, fire alarms, building noise) 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 Spring 2021 Bar Training exam dates were as follows:

Criminal Litigation: Friday 16th April 2021 14:00
Civil Litigation (Paper 1): Wednesday 21st April 2021 14:00
Civil Litigation (Paper 2): Friday 23rd April 2021 14:00

2.4 Marking

2.4.1   Over 80% of Bar Training candidates for the Spring 2021 sit attempted the examination papers using a CBT platform. Their answers were submitted to the BSB in excel format. Correct answers were credited using formulae and checks were conducted to ensure formulas were working correctly. Where interventions were agreed by the Final Board, these were applied to the mark scheme, which was reflected in the candidates' marking, and checks were conducted to ensure they were applied correctly. Answers from candidates sitting pen and paper exams were captured via the scanning software but processed with those from CBT candidates.

2.4.2   For both the centrally assessed knowledge areas, once the marking is completed, statistical data is generated (based on candidates' marks) and presented at a series of Examination Boards.

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.
   - 'Manhattan diagrams' (pentile histograms) which rank candidates into 20% bands based on their performance in respect of each question in each exam. For each exam question, the first bar of the Manhattan diagram shows the top 20% of candidates and the proportion who answered the question correctly. A decrease in correct answers going down through the bands indicates a good discrimination between strong and weak candidates.
   - statistical analysis by the psychometrician.
   - the Chief Examiner's commentary on the assessment process.
   - 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 (e.g., 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/336cf93a-9ff4-4571-965a91e757d5ab4d/b151a369-e120-436f-9d7340798fda3092/centralisedassessments-policygoverningstudentreview.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 SPRING 2021 SIT

3.1 Criminal Litigation provisional pre-intervention pass rate Spring 2021

All Provider pre-intervention	Criminal Litigation Spring 2021	Criminal Litigation Winter 2020
Number of candidates	1104	382
Passing rate	31.8	58.4

The table above shows the all-AETO Spring 2021 provisional pre-intervention Bar Training cohort pass rate of 31.8% for Criminal Litigation, based on a passing standard reported to the Subject Board of 44/75. This was the second sitting of the Criminal Litigation examination on the new vocational component of Bar Training and it is clear that the provisional pre-intervention passing rate for Spring 2021 was substantially down compared with the first sitting of the exam on the new course in Winter 2020.

3.2 Pre-intervention histogram of MCQs
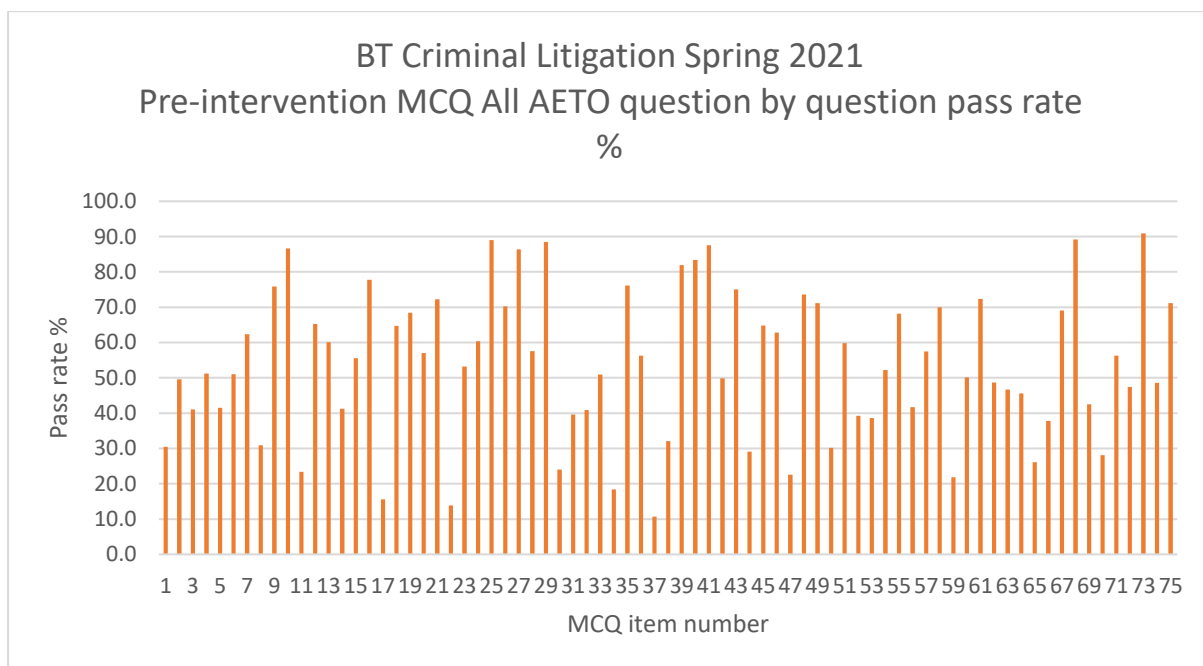
The pre-intervention data shows 19 MCQs with an all-AETO cohort pass rate below 40% (compared to 9 for the Winter 2020 sit). There is no significant evidence to suggest a fall-off in candidate performance during the examination (assuming most candidates attempted the 75 MCQs in the order presented). Across the first 25 MCQs the average pass rate was 53.5%, across MCQs 26 to 50 it was 55.3%, and across MCQs 51 to 75 it rose again to 52.8%.

3.3 Details of Subject Board discussions and interventions

3.3.1   Interventions agreed by the Final Board

Q10	This was an SBA question intended to test candidates' understanding of the rules in relation to joinder of indictments. The intended best answer was [C]. There were a number of comments in the AETO feedback with regards to candidates' ability to distinguish between options [C] and [D]. The Subject Board noted that the item had very poor discrimination, with negative discrimination on option [C] and a positive correlation on option [D], which indicates that the stronger candidates preferred option [D]. While the Subject Board still felt that [C] was a better answer, it was felt that it would be unfair to expect Bar Training candidates to be able to sufficiently distinguish between options [D] and [C] without practitioner knowledge. It was also noted that the language used in option [C] could have been tightened up to distinguish it from option [D]. The recommendation of the Criminal Litigation Subject Board to intervene by crediting [D] in addition to the correct answer [C] was accepted by the Final Board.
Q41	This was an SBA question related to appropriate gateways for the admissibility of character evidence. The intended best answer was [B]. This question had poor discrimination, with negative discrimination on the intended best answer and a positive correlation on option [A], which 61% of candidates selected. After lengthy discussion of the rationale for preferring the gateway set out in option [B] over that in option [A], the Subject Board felt that both were valid bases for an application and that [B] was not sufficiently better than [A] to justify crediting [B] alone. There was only one brief AETO comment on this item, which did not address the issue considered by the Subject Board. The recommendation of the Criminal Litigation Subject Board to intervene by crediting [A] in addition to the correct answer [B] was accepted by the Final Board.

3.3.2   The Final Board noted that the post-intervention passing rate was 36.2% based on a recommended pass standard of 44/75. Given that the passing rate was significantly lower than previous sittings, the Final Board reviewed a number of factors that could have contributed to this. It was reported that, notwithstanding that the standard setting process for the Criminal Litigation assessment had proceeded in the

normal way, some of the standard setters, while experienced, had not participated in standard setting for a while. It was noted that there had been a higher standard deviation than normally expected on a few questions, but that the outlying scores were discussed, and appropriate changes were made.

3.3.3 The Examinations Manager reported to the Final Board that checks had been carried out after the meeting of the Subject Board to investigate the possibility of data corruption and that, as a result of those investigations, that could be ruled out as a cause of the lower passing rate.

3.3.4 Candidates taking both the Criminal Litigation and Civil Litigation examinations would, by-and-large, be expected to achieve scores within similar ranges on both exams, which was not the case in this sitting. The Psychometrician advised the Final Board that the disparity in passing rates between the two litigation subjects in respect of candidates who had attempted both papers warranted further investigation.

3.3.5 The Chair noted that in the Winter 2020 Criminal Litigation assessment only two questions had a passing rate below 25%; in the August 2020 sit the comparable number was, three; for Spring 2019, four. The Spring 2021 paper produced eight with a passing rate below 25%. In the Winter 2020 paper there were 33 questions for which two distractors attracted less than 10% of candidates, compared to 29 on the Spring 2021 paper. The Winter 2020 paper had seven questions on which three distractors attracted less than 10% of candidates. For the Spring 2021 paper there was only one such question. All of this was noted by the Final Board as evidence strongly suggesting that the Spring 2021 Criminal litigation examination was somewhat more challenging than previous papers and that the standard setting process may not have adequately reflected this, for the following reasons

- Two standard setters who had not participated in standard setting for some time.
- Statistical evidence suggesting the new questions are more challenging.
- The development of better distractors for SBAs
- The possibility that standard setters are focussing on the correct answer and not considering the effectiveness of the distractors.
- The fact that 60% of questions on the paper were new and there was evidence that newer questions were more difficult.

3.3.6 The Chair reminded the Final Board of five key considerations when contemplating a deviation from the recommended pass standard:

- The impact of setting a precedent
- The danger of introducing norm-referencing (the idea that there was a 'correct' typical passing rate
- The overriding need to be fair to the candidates
- The need to make a principled decision and not on based on expediency

3.3.7 Taking into account all of the above considerations, and with the support of both the Independent Observer and the Psychometrician, the Final Board agreed that the pass standard should be revised to 41/75.

3.4 Criminal Litigation post-intervention pass rate Spring 2021

| All Provider post-intervention	Criminal Litigation Spring 2021	Criminal Litigation Winter 2020
Number of candidates	1104	382
Passing rate	46.20%	59.9%

The table above shows the all-AETO Spring 2021post-intervention Bar Training cohort pass rate of 46.2% for Criminal Litigation, based on a passing standard recommended to the Final Board (as a result of the standard setting process) of 41/75. The net effect of the agreed interventions was to increase the provisional pre-intervention pass rate by just 14.4%, however this was still 13.7% below the passing rate for the Winter 2020 sit.

3.5 Spring 2021 Criminal Litigation pre- and post-intervention pass rates by AETO
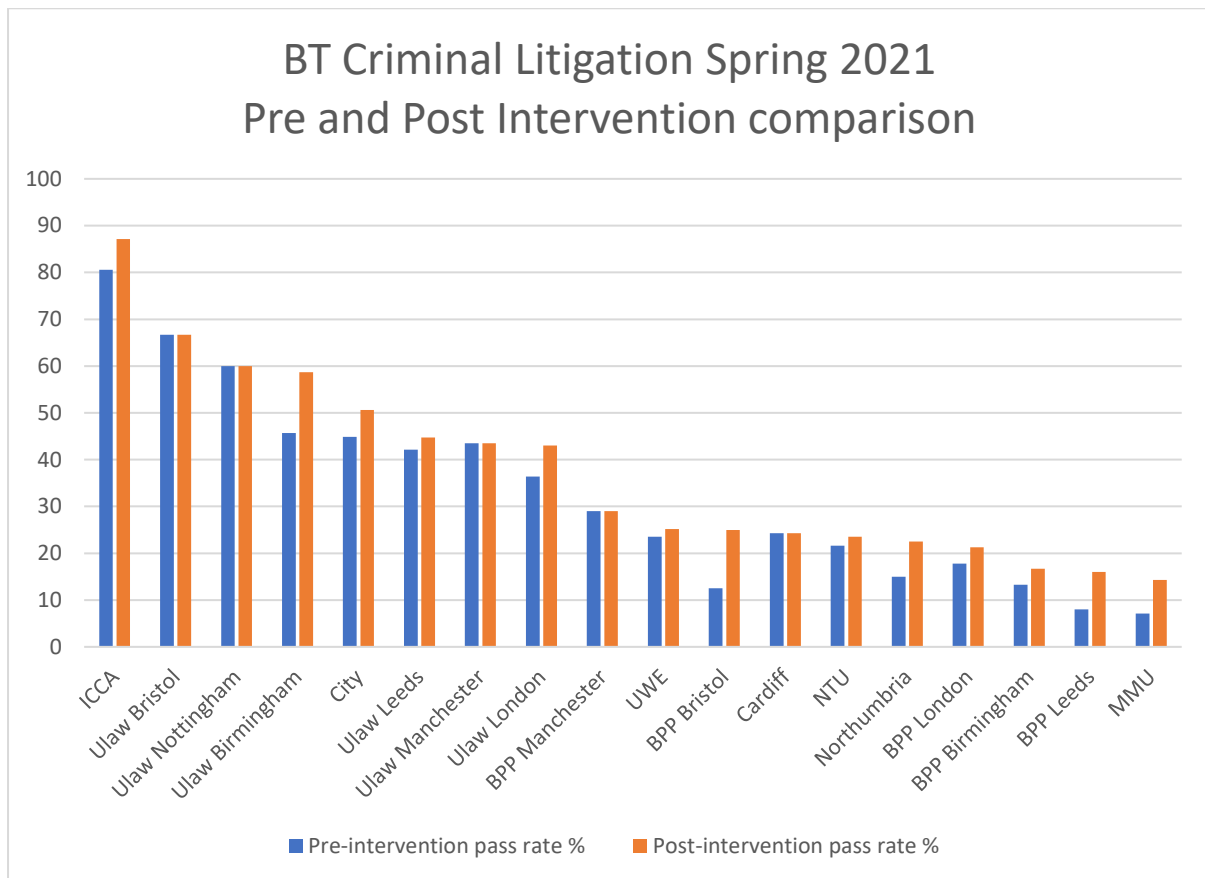
BT Criminal Litigation Spring 2021
Pre and Post Intervention comparison

Legend: ■ Pre-intervention pass rate %   ■ Post-intervention pass rate %

AETO centre cohorts are ranged left to right in order of their Spring 2021 post-intervention pass rates. Hence, ICCA had the highest Spring 2021 post intervention pass rate at 87% and MMU the lowest at 14.3% — a range of over 72.8%, suggesting that the assessment operated effectively in identifying stronger and weaker cohorts. The interventions (in relation to MCQs 10 and 41) and approval of a lower pass standard had a positive impact on the provisional pre-intervention passing rates of 12/18 AETO centre cohorts. The biggest positive impact was in respect of the Ulaw Birmingham cohort where the pass rate rose by 13%. Averaged across AETO cohorts the impact was a modest 4.5%. The intervention very little impact on the range in performance between the strongest and weakest cohort. It is also notable that there were 10/18 AETO cohorts where fewer than 40% of candidates achieved the passing standard.

3.6 Winter 2020 and Spring 2021 Criminal Litigation post-intervention pass rates by AETO compared

BT Criminal Litigation Winter 2020 vs Spring 2021 post-intervention passing rates

Winter 2020 post-intervention passing rate — Spring 2021 post-intervention passing rate
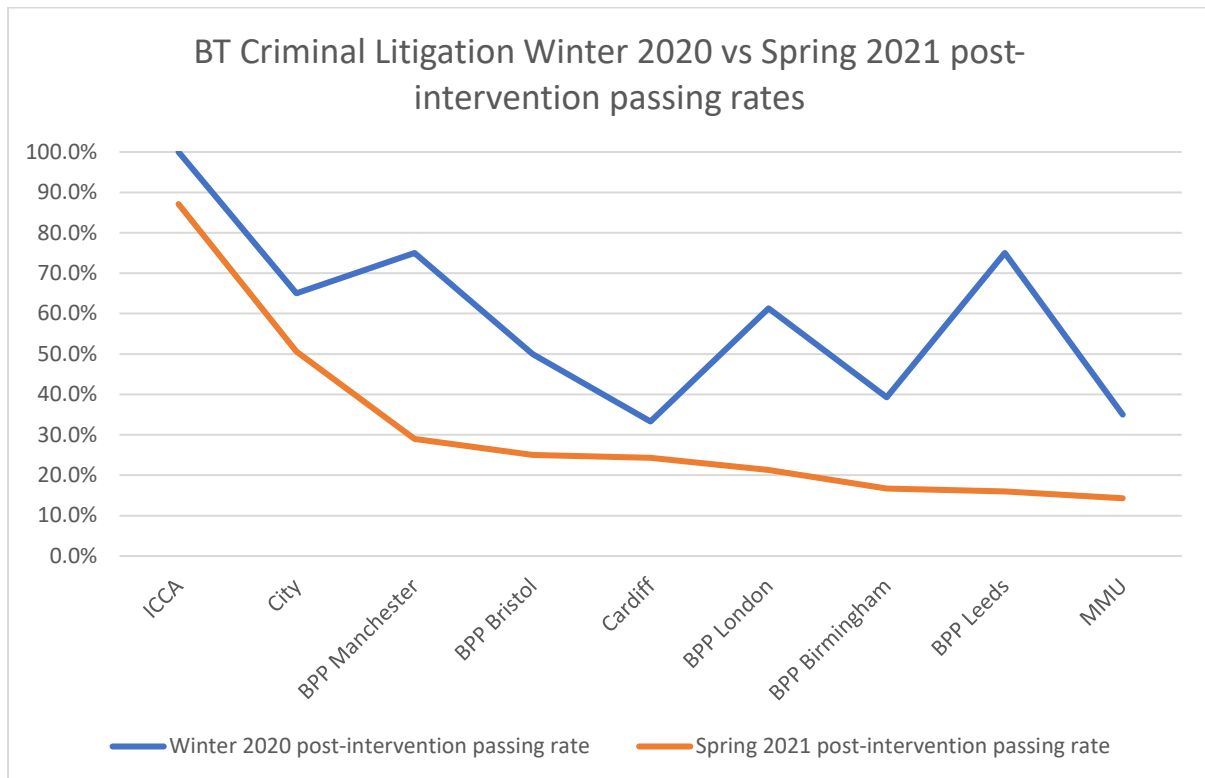
3.6.1   AETO centre cohorts are ranged left to right in order of their Spring 2021 post-intervention pass rates. Only the 9 AETO centre entering cohorts for both the Winter 2020 sit and the Spring 2020 sit are included. The data shows that ICCA has delivered the strongest post-intervention cohort performance in Criminal Litigation across the 2 sittings so far, with an average cohort passing rate across those both cycles of 93.6%. City have the second highest average passing rate over the same period at 57.8%. MMU have the lowest average passing rate at 24.7%.

3.6.2   All Providers reported a decline in passing rates compared to the Winter 2020 sit – the average fall being 27%. This figure masks some wide variations, however. Whilst the decline for Cardiff was just over 9%, for BPP Leeds it was 59% (although note that smaller cohort number can result in large percentage changes). Some AETO cohorts for the Spring 2021 sit may have included candidates attempting for the second time where they had already attempted in Winter2020.

4. BAR TRAINING CIVIL LITIGATION RESULTS SPRING 2021

4.1 Civil Litigation provisional pre-intervention pass rate Spring 2021

| All Provider pre-intervention	Civil Litigation Spring 2021	Civil Litigation Winter 2020
Number of candidates	989	407
Passing rate	52.7	57.2%

The table above shows the all-AETO Spring 2021 provisional pre-intervention Bar Training cohort passing rate of 52.7% for Civil Litigation, based on a passing standard recommended to the Final Board (as a result of the standard setting process) of 53/90. The resulting provisional pre-intervention passing rate for Civil litigation was slightly down on the comparable figure for the Winter 2020 sitting.

4.2 Pre-intervention histogram of MCQs: Civil Paper 1

BT Civil Litigation Paper 1 Spring 2021 Pre-intervention MCQ All Provider question by question histogram Pass rate %
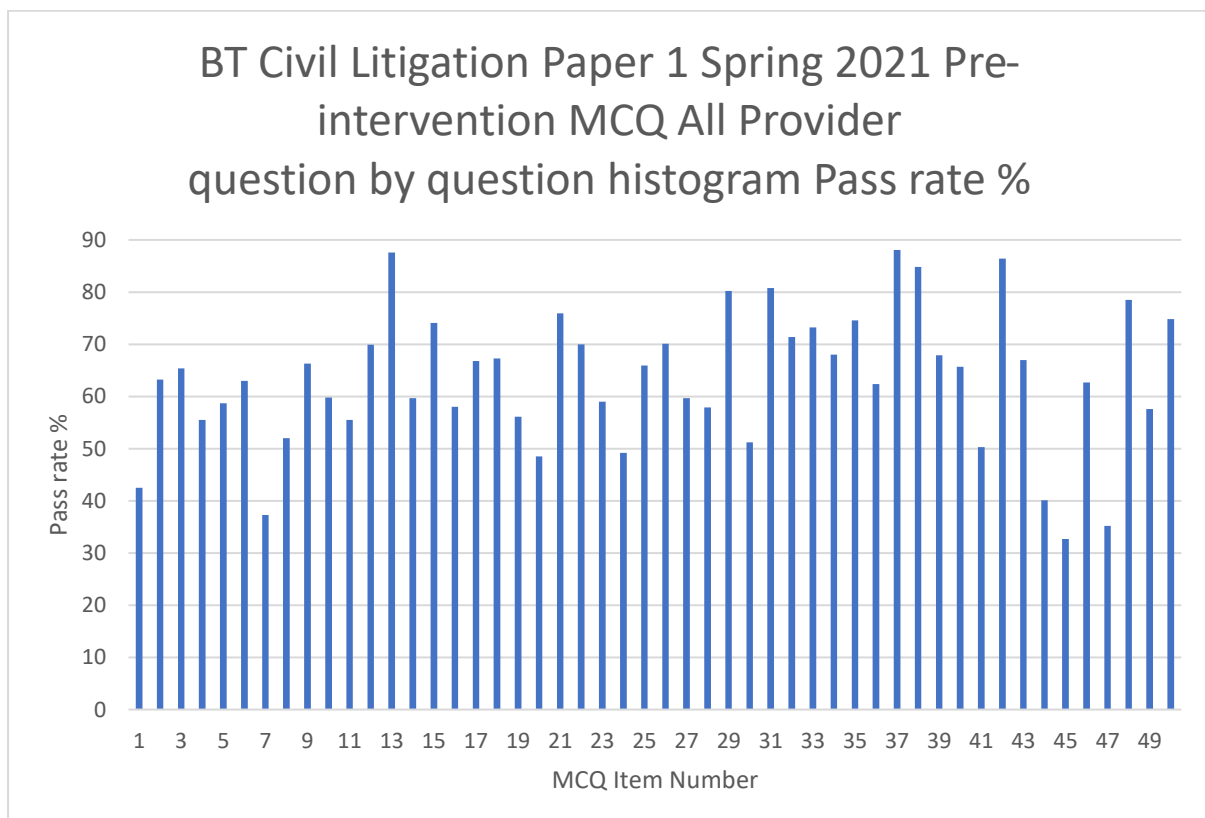
The pre-intervention data shows 3 MCQs with an all-AETO cohort passing rate below 40% (compared to 5 in the Winter 2020 sit). Assuming candidates attempted the questions in the order presented there is no evidence of candidate fatigue being a factor. On the contrary, the average passing rate across the first 25 MCQs was 61%, compared with 66% across MCQs 26 to 50.

4.3 Pre-intervention histogram of MCQs: Civil Paper 2

BT Civil Litigation Paper 2 Spring 2021 Pre-intervention MCQ All Provider question by question histogram Pass rate %
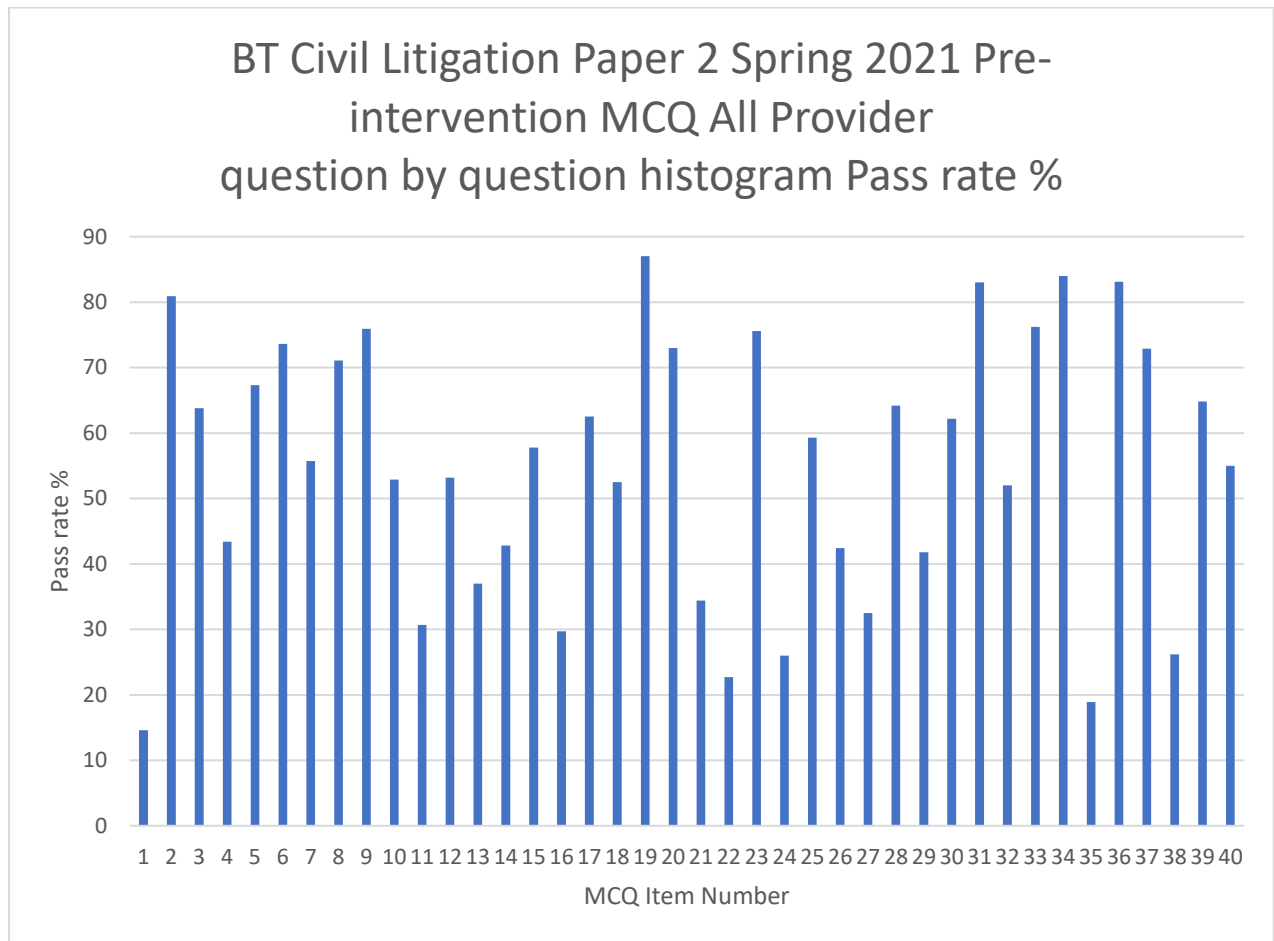
4.3.1   The pre-intervention data for Paper 2 shows 10 MCQs with an all-AETO cohort passing rate below 40% (the same figure as for the Winter 2020 sit). Assuming candidates attempted the questions in the order presented there is very marginal evidence of candidate fatigue being a factor. The average passing rate across the first 20 MCQs was 56%, compared with 54% across MCQs 21 to 40. A further factor to bear in mind in making this comparison is that the first 5 MCQs are stand-alone questions, hence possibly presenting less of a challenge in an open book assessment compared to the rolling case scenario style questions featured in the later MCQs.

4.3.2 Questions 6 to 40 covered 7 rolling case scenarios each comprised of 5 MCQs. As the table below demonstrates, somewhat counter-intuitively, the average passing rate across the 5 stand-alone MCQ questions was lower than that for 4 of the rolling case scenarios.

BT Civil Litigation Paper 2 Spring 2021 MCQs and rolling case scenarios compared
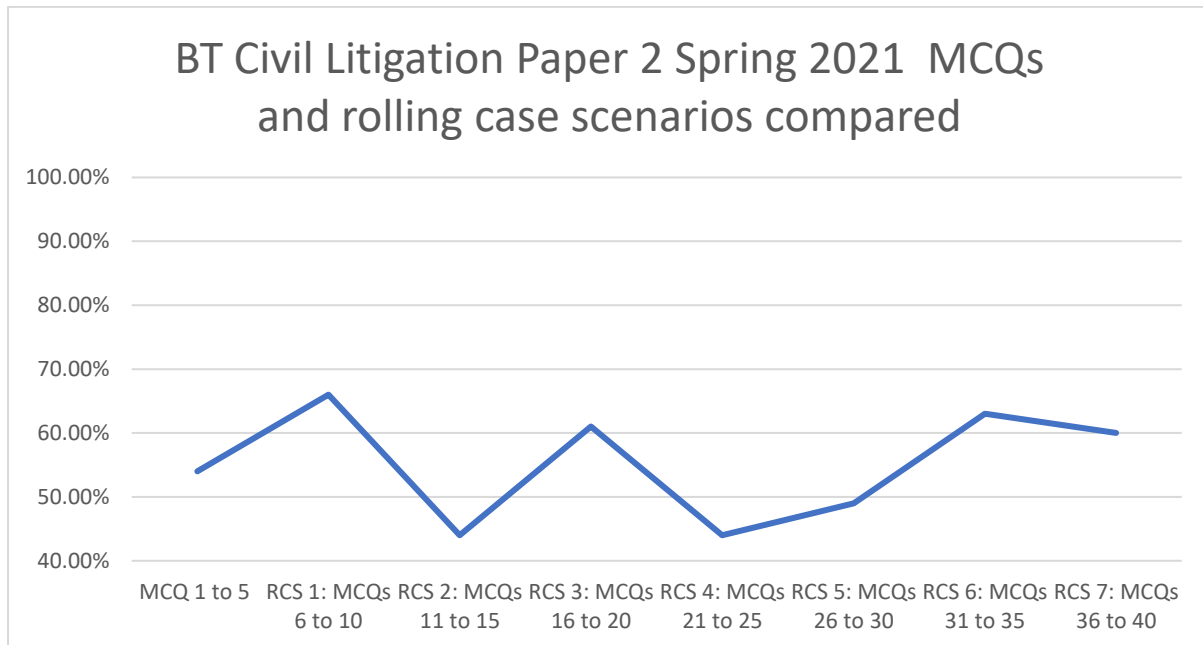
4.4 Details of Subject Board discussions and interventions

4.4.1 There were no interventions deemed necessary by the Final Board in respect of questions on paper 1 of the Civil Litigation assessment.

4.4.2 In respect of paper 2, 2 interventions were proposed by the Civil litigation Subject board.

Paper 2, Q1	This was a single best answer (SBA) item which was intended to assess candidates' knowledge of appropriate pre-action conduct in the face of imminent expiry of limitation. The intended best answer was [C].
	Although option [D] was an overly cautious approach and would have incurred costs for the client, the Subject Board considered that candidates should not be penalised for choosing such a cautious approach. Furthermore, it was recognised that an element of practitioner experience would have assisted candidates in selecting [C], however this experience was not expected of candidates.
	There was clear negative discrimination on designated best answer [C], and option [D] attracted more strong candidates.

	It was felt that although option [C], followed the letter of the law, it was unfair to deprive candidates of the benefit of selecting option [D] solely because it would incur additional costs for the client given that the fact pattern disclosed a very tight time period in which to act in the best interests of the client. It was reflected that a candidate should not be penalised for acting in the best interest of the client. It was also noted that five AETOs provided feedback on this question. The Subject Board felt the AETO feedback was reasonable and took it into consideration. The recommendation of the Civil Litigation Subject Board to intervene by crediting [D] in addition to the correct answer [C] was accepted by the Final Board.
Paper 2, Q24	This item was intended as an SBA, and [A] was the designated best answer. The wording of option [A] stated *"Seek, and, if necessary, apply for specific inspection of the invoices."* Unfortunately, this wording led the question to become unanswerable because the phrase *"specific intervention"* has a particular narrow meaning within the context of standard disclosure as provided for at CPR 31.12 and 31.3(2). Had option [A] been written as *"Seek, and, if necessary, apply for inspection of the specific invoices"* the question would have been acceptable, but, as written, the question fell short of the exactitude required. None of the other options provided a satisfactory best answer. This was unfortunate as 62% of candidates chose option [B], which recommended applying for specific disclosure of the invoices. Such an application would have been unnecessary as the documents had already been disclosed in the statement of case. It was decided that option [B] could not be credited on the basis that it would be wholly inappropriate to credit an incorrect answer. It was noted that feedback from AETOs was received on this item. The recommendation of the Civil Litigation Subject Board to intervene by suppressing this item was accepted by the Final Board.

4.4.3 Intervening in respect of MCQ 1 on Paper 2 and supressing MCQ 24 on Paper 2 impacted on the proposed passing standard, which was then recalculated as 52/89 using CEB conventions. The Final Board reaffirmed the approach previously taken to the effect that that a candidate can only be said to have passed or failed the assessment once the Final Board has endorsed

any proposed interventions and the passing standard. The data presented at the Subject Boards was indicative and served to inform the boards on the performance of questions and assist on intervention decisions. References to pre-intervention "pass rates" should, therefore, be read with that caveat in mind. Pre-intervention "pass rates" indicated what the pass rates would look like without any intervention being agreed. No candidate could be said to have passed or failed an assessment until the Final Board had conformed any proposed interventions and they were applied to the raw data.

4.4.4 The Psychometrician advised the Board that the pre-intervention exam reliability score for this assessment, using the Kruder Richardson scale, was 0.9 and that this figure was not impacted by the interventions agreed. The Psychometrician observed that he was content with the way in which the assessment had operated and saw nothing in the data analysis to raise any concerns.
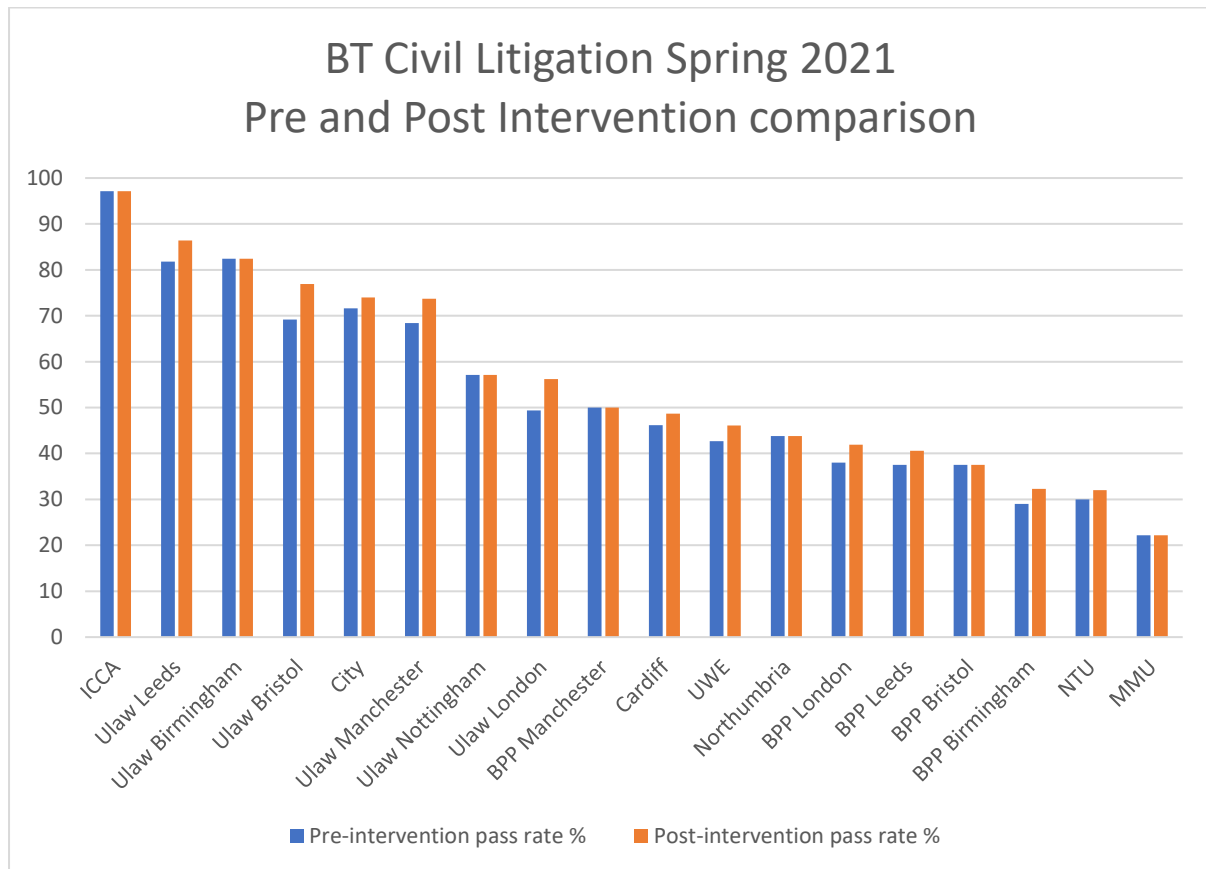
4.4.5 The Independent Observer endorsed the decisions of the Final Board proceedings in respect to the Civil Litigation assessment.

4.5 Civil Litigation post-intervention pass rate Spring 2021

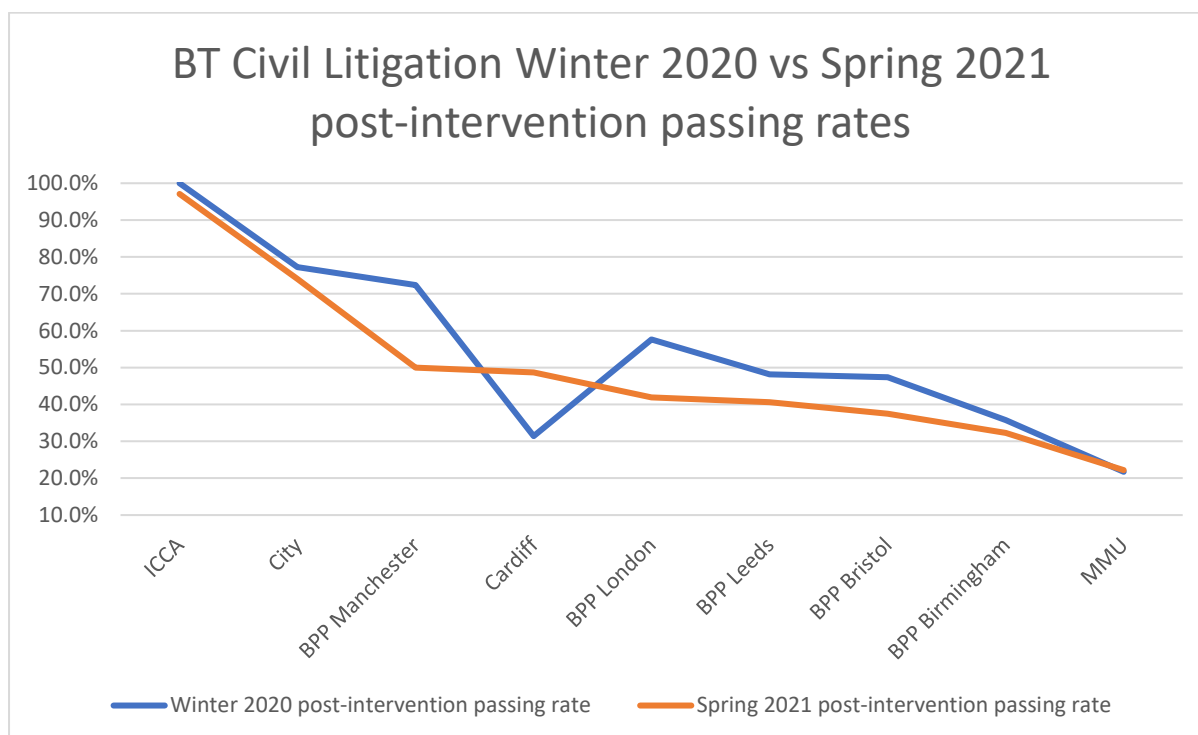| All Provider post-intervention	Civil Litigation Spring 2021	Civil Litigation Winter 2020
Number of candidates	989	407
Passing rate	55.5	55.8%

The table above shows the all-AETO Spring 2021 post-intervention cohort passing rate of 55.5% for Civil Litigation, based on a passing standard recommended to the Final Board (as a result of the standard setting process) of 52/89. The net effect of the agreed interventions was a post-intervention passing rate 2.8% higher than the provisional pre-intervention passing rate. The Spring 2021 overall post-intervention cohort passing rate is almost identical to that reported for the Winter 2020 sitting.

4.6 Spring 2021 Civil Litigation pre- and post-intervention pass rates by AETO

BT Civil Litigation Spring 2021
Pre and Post Intervention comparison

Legend: ■ Pre-intervention pass rate % ■ Post-intervention pass rate %

(AETOs left to right: ICCA, Ulaw Leeds, Ulaw Birmingham, Ulaw Bristol, City, Ulaw Manchester, Ulaw Nottingham, Ulaw London, BPP Manchester, Cardiff, UWE, Northumbria, BPP London, BPP Leeds, BPP Bristol, BPP Birmingham, NTU, MMU)

AETOs are ranged left to right in order of their Spring 2021 post-intervention pass rates for Civil litigation. Hence ICCA had the highest Spring 2021 post-intervention pass rate at 97.1% and MMU the lowest at 22.2% — a range of over 74.9%, suggesting that the assessment operated effectively in identifying stronger and weaker cohorts. The interventions (in relation to MCQs 1 & 24 on Paper 2) had no impact on the pass rates of 7 of the 18 AETO cohorts. The biggest positive impact was a 7.7% uplift for the Ulaw Bristol cohort. No AETO cohort was negatively impacted by the interventions. In contrast to the Criminal Litigation assessment there were only 4 AETO cohorts where fewer than 40% of candidates achieved the pass mark in Civil Litigation.

4.7 Winter 2020 and Spring 2021 Civil Litigation post-intervention pass rates by AETO compared

BT Civil Litigation Winter 2020 vs Spring 2021 post-intervention passing rates

Winter 2020 post-intervention passing rate — Spring 2021 post-intervention passing rate

4.7.1 AETO centre cohorts are ranged left to right in order of their Spring 2021 post-intervention pass rates. Only the 9 AETO centre entering cohorts for both the Winter 2020 sit and the Spring 2020 sit are included. The data shows that ICCA has delivered the strongest post-intervention cohort performance in Criminal Litigation across the 2 sittings so far, with an average cohort passing rate across those both cycles of 98.6%. City have the second highest average passing rate over the same period at 75.6%. MMU have the lowest average passing rate at 22%.

4.7.2 Only 2 AETO centres reported an improvement in passing rates for Spring 2021 compared to Winter 2020, with Cardiff up 22.2%. Across all 9 AETO centres passing rates dropped by an average of just over 5%, BPP Manchester recording a drop of 22% (although note that smaller cohort number can result in large percentage changes). Some AETO cohorts for the Spring 2021 sit may have included candidates attempting for the second time where they had already attempted in Winter2020.

5. FURTHER COMPARATIVE ANALYSIS

5.1 Centralised assessment post-intervention pass rates compared Spring 2021

All AETO Post-intervention	Spring 2021		Winter 2020	
	Criminal Litigation	Civil Litigation	Criminal Litigation	Civil Litigation
No of candidates	1104	989	383	407
Passing rate	46.2	55.5	59.8%	55.8%
Confirmed passing standard	41/75	52/89	43/75	50/88
reported reliability score	0.84	0.90	0.89	0.91

Significantly more candidates attempting the Spring 2021 sit compared to Winter 2021. As indicated above, a number of those sitting in Spring 2021 may have been candidates who were unsuccessful in their Winter 2020 attempt. Reliability levels are comparable. The only notable feature in this data is the drop in the Criminal litigation passing rate for the Spring 2021 sit compared to Winter 2020.

5.2 Spring 2021 post-intervention pass rates for both subjects by AETO
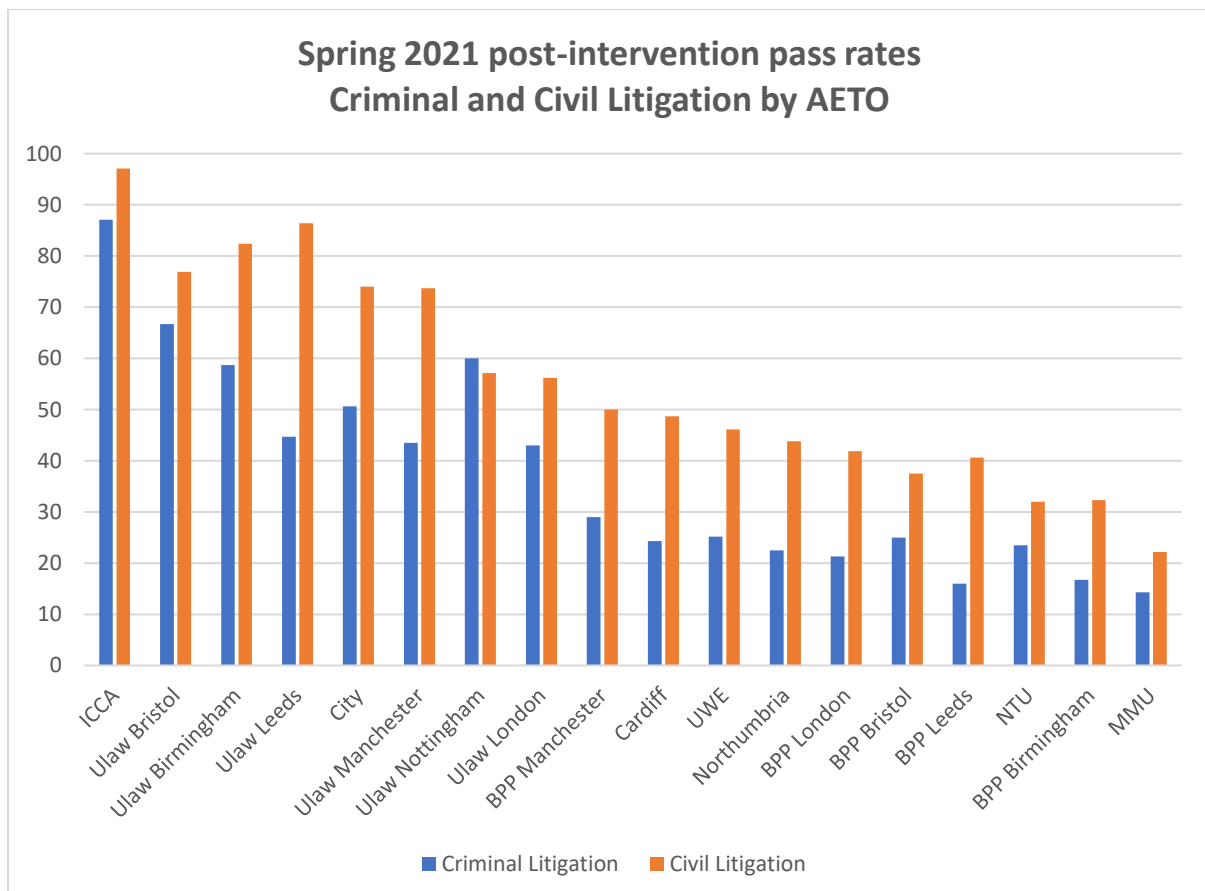
5.2.1 AETO cohorts are ranged left to right according to the average of their pass rates across both the Criminal and Civil Litigation examinations in the Spring 2021 sit. From this it can be seen that ICCA had the highest performing cohorts with an average passing rate across both litigation assessments of 92.1% MMU cohorts returned the lowest average pass rate across the two subjects of just 18.3%. Overall, 10 AETO centres failed to achieve an average passing rate of 40% taking both litigation subjects together. Some of the disparities between cohort performance in the two examinations at the same AETO centre were quite marked. For example, at Ulaw Leeds the passing rate for Criminal Litigation was 44.7% compared with 86.4% for Civil Litigation, a differential of over 41%. Ulaw Nottingham was the only AETO centre recording a higher passing rate in Criminal Litigation compared to Civil Litigation (2.9%).

5.2.3 If the results for the various AETO groupings are aggregated the strong performance by the ICCA cohorts becomes very apparent:

AETO Group	Average passing rate across both subjects across all centres
ICCA (1 centre)	92.1%
Ulaw (6 centres)	62.4%
BPP (5 centres)	40.5%
University group (6 centres)	35.6%

Professor Mike Molan
Chair of the Central Examination Board
5th July 2021