BAR STANDARDS BOARD

REGULATING BARRISTERS

THE BAR STANDARDS BOARD
CENTRAL EXAMINATIONS BOARD
CHAIR'S REPORT

Bar Training
December 2020 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 December 2020. The confirmed post-intervention outcomes of the December 2020 Bar Training examinations are as follows:

All Provider post-intervention	Civil Litigation December 2020	Criminal Litigation December 2020
Number of candidates	407	383
Passing rate	55.8%	59.8%

No trend data is supplied as this is the first sitting of the centralised Bar Training examinations.

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.

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

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[1] NB Remedies was later removed from the syllabus

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]

1.5 Table of Bar Training Course AETO centres December 2020

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

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

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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 January 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.

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 these reports will be 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 December 2020 Bar Training exam dates were as follows:

Criminal Litigation: Friday 4 December 2020 14:00
Civil Litigation (Paper 1): Monday 7 December 2020 14:00
Civil Litigation (Paper 2): Wednesday 9 December 2020 14:00

2.4 Marking

2.4.1   Candidates attempting the MCQ papers in Civil Litigation and Criminal Litigation record their answers on machine-readable answer sheets. AETO institutions return the original answer sheets to the BSB for machine marking. The MCQ answer sheet scanning is undertaken by specially trained BSB support staff, using Speedwell scanners and software. The scanner removes the risk of wrongly capturing marks which may occur with human input. This process enables accurate production of data, statistics, and results analysis.

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 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. Once the Subject Board agrees what its recommendation to the Final Board will be in respect of the passing standard to be applied, the Subject Board reviews the raw data on cohort performance in relation to the assessment as a whole (overall pass rate and AETO cohort pass rates) and the results for each component question (or part-question) making up the assessment. The key data presented to the Subject Board (reflecting the recommended passing standard) will also include:
- overall pre-and post-intervention pass rates and AETO pass rates for the current and previous two cycles of assessment.
- 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.

2.5.3 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).

2.5.4   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.

2.5.5   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 DECEMBER 2020 SIT

3.1 Criminal Litigation provisional pre-intervention pass rate December 2020

All AETO pre-intervention	Criminal Litigation December 2020
Number of candidates	383
Pass rate	58.4%

The table above shows the all-AETO December 2020 provisional pre-intervention Bar Training cohort pass rate of 58.4% for Criminal Litigation, based on a passing standard recommended to the Final Board (as a result of the standard setting process) of 43/75. As this was the first ever sitting of the Criminal Litigation examination on the new vocational component of Bar Training there is no comparative data.

3.2 Pre-intervention histogram of MCQs
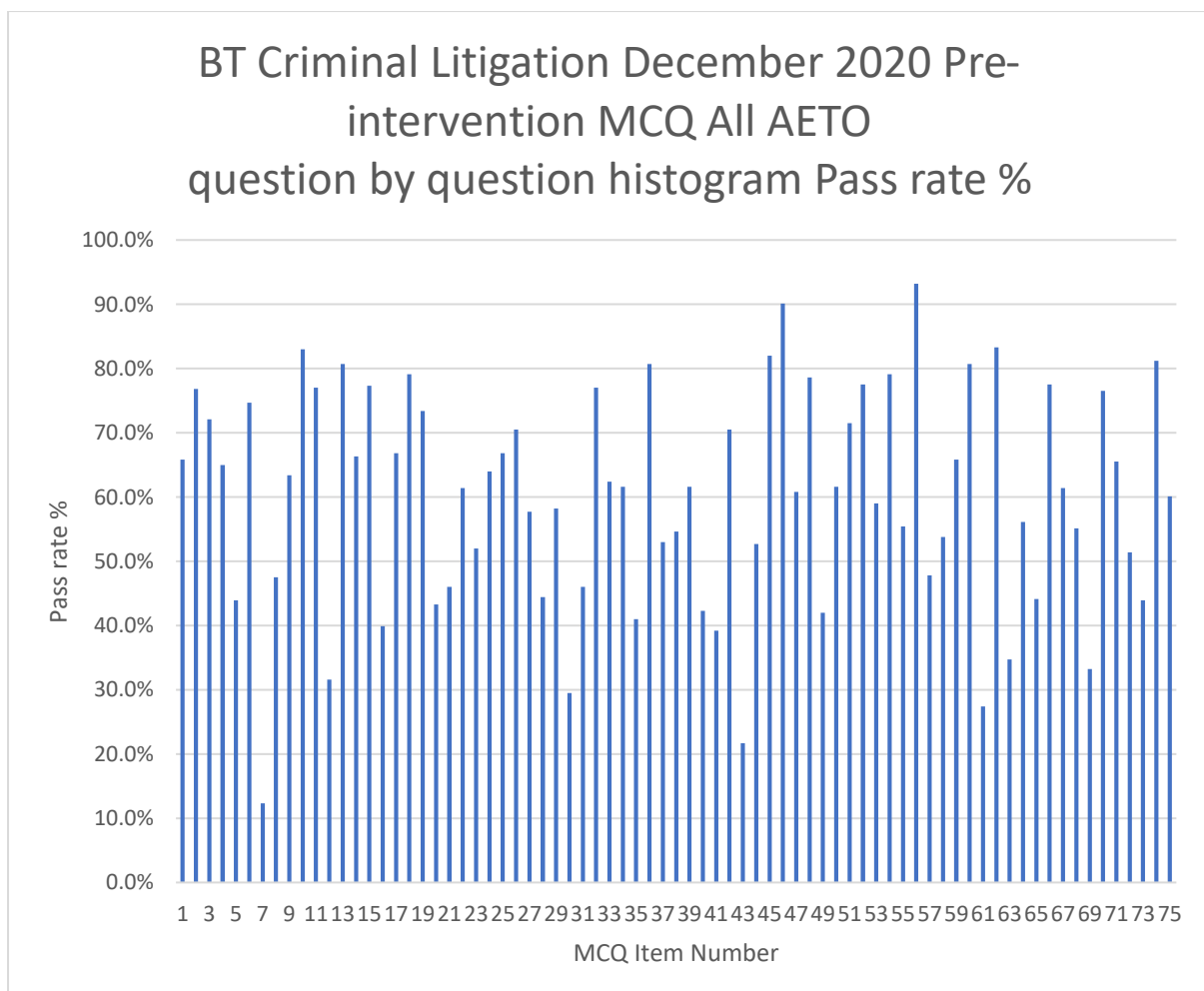
The pre-intervention data shows 9 MCQs with an all-AETO cohort pass rate below 40%. There is no evidence to suggest a fall-off in candidate performance during the examination (assuming most candidates attempted the 75 MCQs in the order presented). Across the first 25 MCQs the average pass rate was 61.2%, across MCQs 26 to 50 it was 57.6%, and across MCQs 51 to 75 it rose again to 61.4%.

3.3 Details of Subject Board discussions and interventions

3.3.1   Interventions agreed by the Final Board

Q.16	This SBA question related to hearsay evidence and was intended to test candidates' understanding of the most important considerations when deciding a hearsay application on the ground of fear. The question had poor discrimination, with negative discrimination on the original "best" answer (option [D]) and positive discrimination on option [A], which indicated that stronger candidates preferred option [A] to the intended best answer. There were also AETO comments which suggested that candidates would find it hard to distinguish between the two options. After discussion at the Subject Board, the examination team agreed that both options [A] and [D] contained valid considerations, and while a practitioner would prefer option [D], it would be difficult for a candidate to distinguish the two options and therefore option [A] should also be credited. To give the benefit of the doubt to candidates, the Board agreed to credit option [A] in addition to correct answer [D].
Q.39	The Chief Examiner advised that this was an SBA dealing with the appropriate gateway for the admissibility of hearsay evidence. The question required candidates to analyse s.116 as the appropriate gateway which would them direct them to options [C] and [D]. Within s.116, proposal [D] was the most likely to succeed in the circumstances presented. However, although there was no evidence that the witness in the fact pattern had left the UK, unintentional steers seemed to have been included in the question that could have impacted on the choice made by candidates, making it a fine distinction between the two options. Her recommendation was that option [D] should be credited as a correct answer in addition to original correct answer, option [C]. This question had poor discrimination, although there was no positive discrimination on any of the distractors. The best answer to this question was based on candidates' analysis of the factual position in relation to the unavailability of a key defence witness and the intention of the question was that the most appropriate gateway for admission of the evidence was that the witness could not be found. There were comments from the AETOs which requested that option [D] also be credited, as the fact pattern indicated that the witness was abroad and therefore this was an equally valid gateway for admission. The examiners' original interpretation of the question's fact pattern was that this was not the best conclusion in the

circumstances. After lengthy discussion and further analysis of the question, the examiners concluded that the alternative interpretation contended for in the AETO feedback could be seen as equally valid (due to the way in which the latter part of the fact pattern was expressed), that therefore this item did not operate as intended and that the fairest outcome would be to credit both
options. It was recommended that option [D] was credited in addition to original correct answer [C]. The Final Board accepted this recommendation.

3.3.2 The Psychometrician advised the Final Board that the Criminal Litigation paper operated as an effective assessment instrument, achieving a reliability score (using the Kruder Richardson scale) of 0.89, well above the benchmark rating of 0.8. The Final Board accepted the recommendation that a passing standard of 43/75 should be adopted.
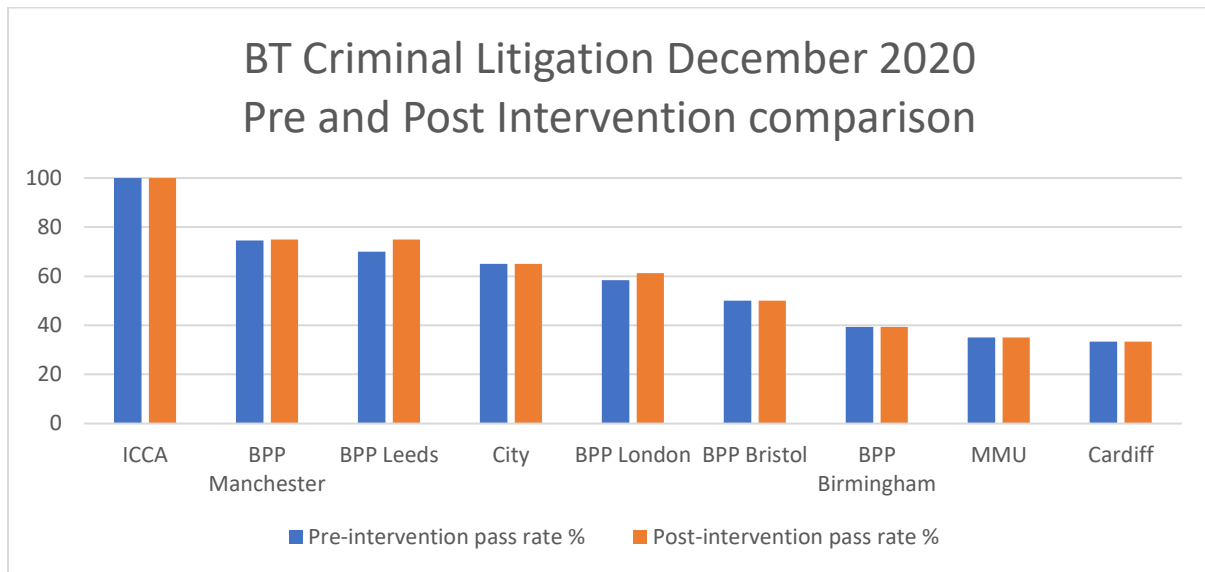
3.3.3 The Independent Observer confirmed that the Board had conducted full and thorough discussion of all issues, and that the interventions applied had been appropriate.

3.4 Criminal Litigation post-intervention pass rate December 2020

All AETO post-intervention	Criminal Litigation December 2020
Number of candidates	383
Pass rate	59.8%

The table above shows the all-AETO December 2020 post-intervention Bar Training cohort pass rate of 59.8% for Criminal Litigation, based on a passing standard recommended to the Final Board (as a result of the standard setting process) of 43/75. The net effect of the agreed interventions was to increase the provisional pre-intervention pass rate by just 1.4%.

3.5 December 2020 Criminal Litigation pre- and post-intervention pass rates by AETO

BT Criminal Litigation December 2020 Pre and Post Intervention comparison

AETO	Pre-intervention pass rate %	Post-intervention pass rate %
ICCA	100	100
BPP Manchester	75	75
BPP Leeds	70	75
City	65	65
BPP London	59	61
BPP Bristol	50	50
BPP Birmingham	40	40
MMU	35	35
Cardiff	33	33

AETOs are ranged left to right in order of their post-intervention pass rates. Hence, ICCA had the highest December 2020 post intervention pass rate at 100% and Cardiff the lowest at 33.3% — a range of over 66%, suggesting that the assessment operated effectively in identifying stronger and weaker cohorts.

The interventions (in relation to MCQs 16 and 39) had no impact on the pass rates of 6 of the 9 AETO cohorts, but the biggest positive impact was in respect of the BBP Leeds cohort where the pass rate rose by 5%. Averaged across AETO cohorts the impact was negligible at just under 1%. The intervention had no impact on the range in performance between the strongest and weakest cohort. It is also notable that there are three AETO cohorts where fewer than 40% of candidates achieved the passing standard.

4. BAR TRAINING CIVIL LITIGATION RESULTS DECEMBER 2020 SIT

4.1 Civil Litigation provisional pre-intervention pass rate December 2020

| All AETO pre-intervention	Civil Litigation Winter 2020
Number of candidates	407
Passing rate	57.2%

The table above shows the all-AETO December 2020 provisional pre-intervention Bar Training cohort passing rate of 57.2% for Civil Litigation, based on a passing standard recommended to the Final Board (as a result of the standard setting process) of 51/90. As this was the first ever sitting of the Civil Litigation examination on the new vocational component of Bar Training there is no comparative data.

4.2 Pre-intervention histogram of MCQs: Civil Paper 1

Civil Litigation Paper 1 December 2020 Pre-intervention MCQ All AETO question by question histogram Pass rate %
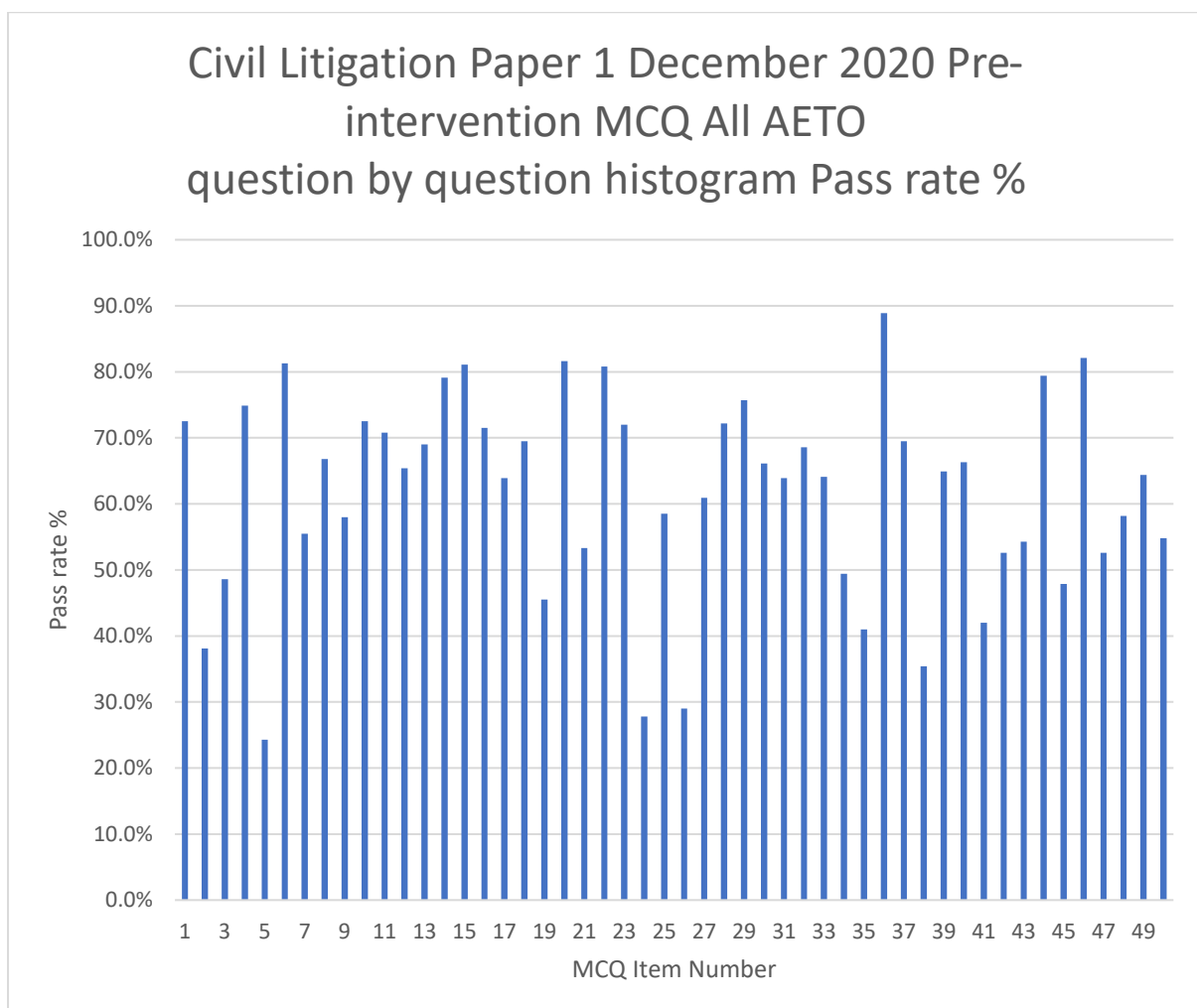
The pre-intervention data shows 5 MCQs with an all-AETO cohort passing rate below 40%. Assuming candidates attempted the questions in the order presented there is little evidence of candidate fatigue being a factor. The average passing rate across the first 25 MCQs was 63.3%, compared with 60.2% across MCQs 26 to 50.

4.3 Pre-intervention histogram of MCQs: Civil Paper 2

Civil Litigation Paper 2 December 2020 Pre-intervention MCQ All AETO question by question histogram Pass rate %
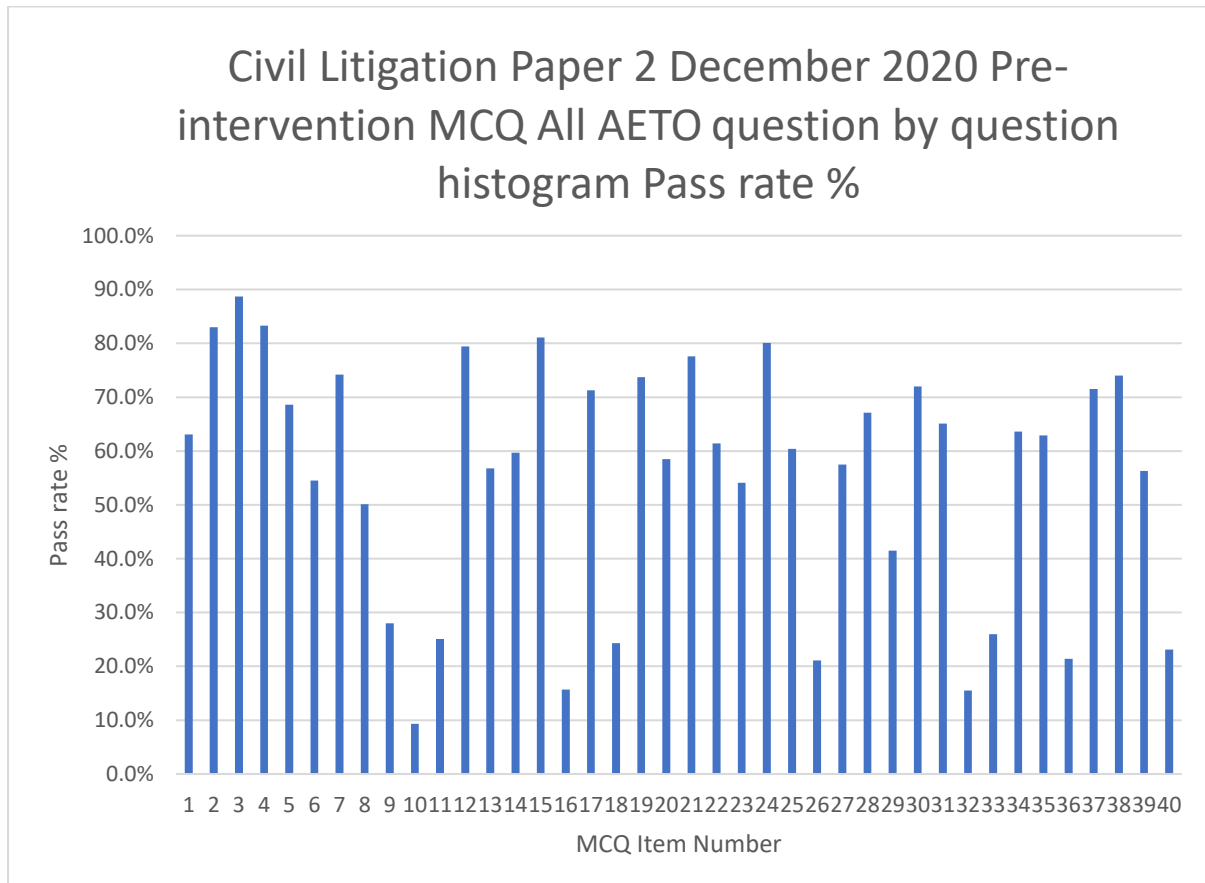
4.3.1   The pre-intervention data for Paper 2 shows 10 MCQs with an all-AETO cohort passing rate below 40%. Assuming candidates attempted the questions in the order presented there is marginal evidence of candidate fatigue being a factor. The average passing rate across the first 20 MCQs was 57.4%, compared with 53.6% 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, the average passing rate across the 5 stand-alone MCQ questions was, predictably, higher than the average for any one of the rolling case scenarios.

Civil Litigation Paper 2 December 2020 MCQs and rolling case scenario pass rates compared
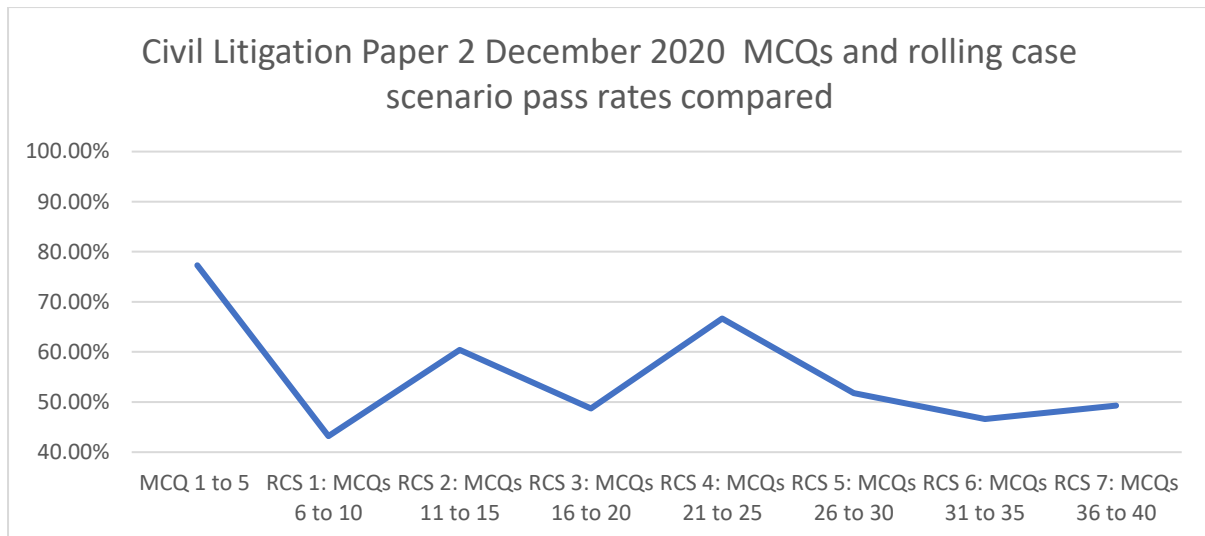
4.4 Details of Subject Board discussions and interventions

4.4.1 Interventions agreed by the Final Board

	Civil Litigation Paper 1
MCQ.4	The Chief Examiner advised the Board that this syllabus area was new to the assessment and was based on learning derived from the Jackson Handbook. The question was intended to test candidates' understanding of what may be disclosed to the court about mediation. It was intended that there should be a clear distinction between options [B] and [C], in that it would clearly be relevant to tell the court the outcome of the mediation if it had resolved as there would be little point in continuing with the litigation otherwise. On that basis, [C] correctly summarised what could be disclosed in accordance with the question stem. However, an AETO commented on the difficulty in distinguishing between options [B] and [C] and, after discussion at the Subject Board, the examining team decided that the distinction was too nuanced and, that it was too difficult to distinguish between options [B] and [C]. In fairness to the candidates, it was agreed that option [B], which attracted 17.7% of candidates, should also be credited alongside option [C], which attracted 74.9% of candidates. It was acknowledged that questions in this new syllabus area, which were reliant upon the material in Jackson, were difficult to write in the MCQ format and might be more effectively presented to candidates as SBA style questions. The recommendation that option [B] be credited in addition to option [C] was accepted by the Final Board.

MCQ.9	The Chief Examiner advised the Final Board that the question was intended to assess the addition of parties outside the limitation period. It was noted that an SBA, by its nature, invites the possibility of different viewpoints as to what may be the best or most appropriate thing to do in a given context. Whilst [D] had been distinguished by the examining team as representing the best advice to give to the client, an AETO considered that candidates may have validly come to an alternative conclusion and, therefore, selected option [A] as the best answer, although this was chosen by only 6.7% of candidates. This comment was discussed in detail and it was concluded that option [A] did identify the best advice to be given as, by making application first to disapply the limitation period and thereafter seeking to add the employer to the proceedings, the Claimant would not have to satisfy the court that the addition of the new party is necessary (that wording being included in option [D]). By following the advice in [A], once the court has exercised its discretion under s.33, the application to add or substitute a new party would no longer be outside the relevant limitation period (the period having been disapplied by the s.33 decision) and therefore the reference to "necessary" in option [D] was redundant. Had option [D] read simply "An application should be made to add the employer, which the court may allow subject to exercising its discretion to disapply the limitation period", it might have been possible to credit both [A] and [D]. However, the use of certain words in options [A] and [D] rendered [A] the best advice and, on that basis, [A] alone should be credited. This recommendation was accepted by the Final Board.
MCQ.21	This question was intended to assess the amendment of the particulars of claim to add a new claim after the expiry of the limitation period. The examiners had anticipated that candidates would readily conclude that the relevant limitation period had expired as six years had passed since the giving of negligent advice. However, upon discussion, it was agreed that the examiners had not provided sufficient clarity as to the date upon which the cause of action accrued in negligence, that being the date at which a loss arose as a result of the solicitors' negligent advice. Had this been predicated as a claim for breach of contract, the issue would not have arisen as the limitation period would have run from the date of breach. Although the candidate performance data did not give cause for concern, one AETO raised an issue of clarity on the limitation point. Another AETO, whilst taking no issue with the correct answer or the clarity of the fact pattern, suggested that the question ought to have tracked the exact wording of the procedural rule, a suggestion which might be adopted should the question be used again. Upon reflection, it was agreed that candidates could not be expected, without clearer direction, to draw a conclusion regarding limitation and therefore could not reasonably be expected to determine an answer to a question concerning an application to amend after the expiry of the limitation period. Although 53% of candidates correctly identified option [C] as the intended correct answer, and notwithstanding that the question had performed well in terms of discrimination, it was agreed

	that the question should be excluded from the assessment. This recommendation was accepted by the Final Board.
	Civil Litigation Paper 2
MCQ.6	The Chief Examiner noted that the question was intended to assess the candidates' knowledge of limitation with particular reference to minors. AETO comments regarding possible confusion arising from the fact pattern involving two claims with different limitation periods were not considered of any merit, but some merit was given to a piece of AETO feedback regarding the limitation point, particularly given the MCQ format. The primary limitation period of three years to bring a personal injury claim does not begin to run against a child until that child's 18th birthday. A child has until their 21st birthday to bring a claim. In the fact pattern preceding the question, an issue as to date of knowledge was introduced which created difficulty as a later date of issue would be the correct answer (albeit an unsatisfactory "best answer"). For this question to have had an incontrovertibly correct answer, a later date should have been provided for (23 December 2023 – the date of knowledge taken from 23 December 2020). Members of the examining team discussed that, to delay until that later date, was not the best advice (albeit that it might strictly be correct) as an application would likely be necessary for the court to exercise its discretion under s.33 Limitation Act 1980. Nonetheless, the examining team recognised that, given the question format, the correct date was not provided for and, were the question to be used again, changes would be made. It was noted that the question discriminated very well and gave no cause for concern to the psychometrician, but it was also noted that, overall, the data showed a spread of responses which might suggest some confusion amongst candidates and, in fairness to all candidates, it was agreed that the question should be removed. Based on these considerations it was recommended that the question should be discounted for the purposes of this assessment. This recommendation was accepted by the Final Board.

4.4.2 Suppressing MCQ 21 from Paper 1 and MCQ 6 from Paper 2 impacted on the proposed passing standard, which was then recalculated as 50/88 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.

4.4.3   The Psychometrician advised the Board that the pre-intervention exam reliability score for this assessment, using the Kruder Richardson scale, was 0.91 and that this figure was not impacted by the suppression of MCQ 21 from Paper 1 and MCQ 6 from Paper 2. The Final Board was advised that the relatively high reliability score of 0.91 could, to some extent, be explained by the fact that the Civil Litigation examination now comprised 90 MCQs spread over 2 papers whereas, for example, the Criminal Litigation was comprised of 75 MCQs in one paper. In effect, the more questions in the assessment the greater the likelihood that a higher reliability score would be achieved. The Psychometrician advised the Board that It could be estimated that the reliability value of 0.91 was equivalent to a reliability value of 0.89 for a 75-item paper. 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.

4.4.4   The Independent Observer stated that she was satisfied by the way in which the Subject and Final Boards had dealt with the challenges thrown up by the new form of assessment and the lengthy and nuanced discussions of the issues. She confirmed that she supported the proposed interventions as a fair an appropriate response.

4.5 Civil Litigation post-intervention pass rate December 2020

All AETO post-intervention	Civil Litigation December 2020
Number of candidates	407
Passing rate	55.8%

The table above shows the all-AETO December 2020 post-intervention cohort passing rate of 55.8% for Civil Litigation, based on a passing standard recommended to the Final Board (as a result of the standard setting process) of 50/88. The net effect of the agreed interventions was a post-intervention passing rate 1.4% lower than the provisional pre-intervention passing rate.

4.6 December 2020 Criminal Litigation pre- and post-intervention pass rates by AETO
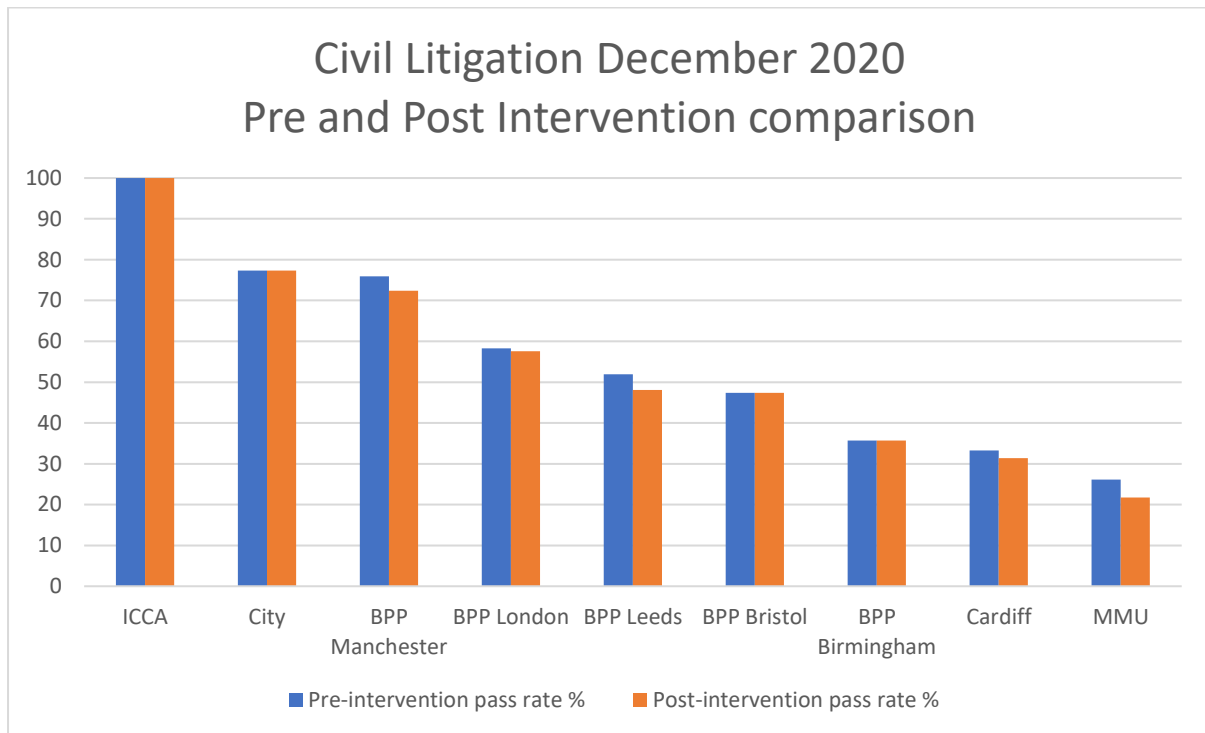
Civil Litigation December 2020
Pre and Post Intervention comparison

AETOs are ranged left to right in order of their post-intervention pass rates. Hence ICCA had the highest December 2020 post-intervention pass rate at 100% and MMU the lowest at 21.7% — a range of over 78%, suggesting that the assessment operated effectively in identifying stronger and weaker cohorts. The interventions (in relation to MCQs 4, 9 & 21 on Paper 1, and MCQ 6 on Paper 2) had no impact on the pass rates of 4 of the 9 AETO cohorts, but the biggest negative impact was in respect of the MMU cohort where the post-intervention was 4.4% lower than the provisional pre-intervention pass rate. As with the Criminal Litigation assessment there are three AETO cohorts where fewer than 40% of candidates achieved the pass mark.

5. FURTHER COMPARATIVE ANALYSIS

5.1 Centralised assessment post-intervention pass rates compared December 2020

All AETO post-intervention	December 2020	
	Criminal Litigation	Civil Litigation
Number of candidates	383	407
Passing rate	59.8%	55.8%
Confirmed passing standard	43/75	50/88
Reported reliability score	0.89	0.91

This table shows largely similar December 2020 post intervention pass rates for both of the centrally assessed elements of the vocational training component.

5.2 December 2020 post-intervention pass rates for both subjects by AETO
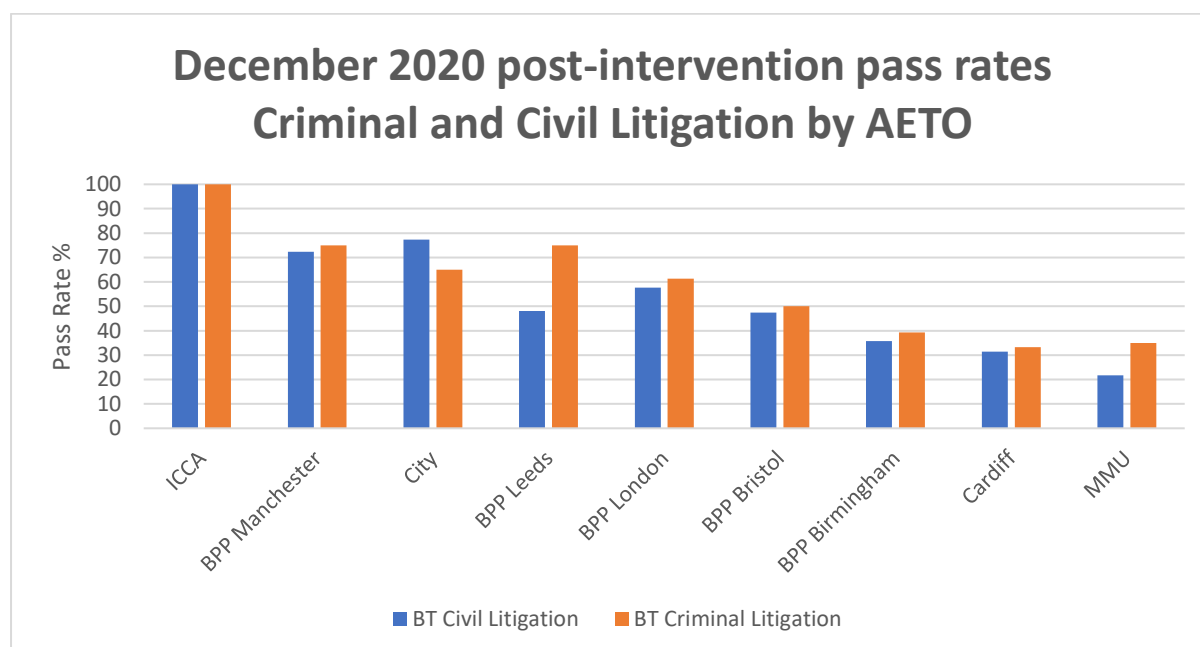
AETO cohorts are ranged left to right according to the average of their pass rates across both the Criminal and Civil Litigation examinations in December 2020. From this it can be seen that ICCA had the highest performing cohorts with a 100% passing rate in both subjects. MMU cohorts returned the lowest average pass rate of just 28%.

Professor Mike Molan
Chair of the Central Examination Board
31 March 2021