

Pupillage/Work Based Component

Professional Ethics Assessment

During the pupillage stage, pupils will be required to pass a centralised assessment in Professional Ethics.

For the purposes of the Professional Ethics Assessment, candidates should be able to demonstrate, in particular, the learning outcomes to the Threshold Standard as expressed in the [Professional Statement¹](#):

Professional Statement

- 1.1 Uphold the reputation of the Bar and observe the duty to the court in the administration of justice
- 1.4 Have an awareness of the wide range of other organisations supporting the administration of justice
- 1.6 Provide clear, concise and accurate advice in writing and orally and take responsibility for it
- 1.10 Make sound judgments in their work
- 1.11 Ensure they are fully prepared
- 1.16 Comply with the regulatory requirements set down by the Bar Standards Board, including the Code of Conduct
- 1.17 Know how to conduct themselves appropriately in court
- 1.18 Only accept work which they believe they are competent to undertake
- 2.1 Act with the utmost integrity and independence at all times, in the interests of justice, representing clients with courage, perseverance and fearlessness
- 2.2 Be honest in their dealings with others
- 2.3 Be aware and active in the pursuit of equality and respect for diversity, not tolerating unlawful discrimination, in themselves or others
- 2.4 Ensure their work does not incur unnecessary fees
- 2.5 Adopt a reflective approach to their work, enabling them to correct errors and admit if they have made mistakes

¹ See ANNEX for fuller content of the *Professional Statement* insofar as it relates to the Threshold Standard for Professional Ethics

- 2.6 Ensure they practise with adaptability and flexibility, by being self-aware and self-directed, recognising and acting upon the continual need to maintain and develop their knowledge and skills
- 3.1 Understand and exercise their duty to act in the best interests of their client
- 3.2 Understand and apply principles of team working where appropriate
- 3.3 Respond appropriately to those from diverse backgrounds and to the needs and sensitivities created by individual circumstances
- 3.4 Treat all people with respect and courtesy, regardless of their background or circumstances
- 3.5 Where appropriate, keep clients, whether lay or professional, informed of case progress in a clear and timely manner and manage their expectations
- 3.6 Demonstrate a good awareness of their additional responsibilities in cases involving direct access and litigants in person
- 4.1 Where appropriate, possess a strong understanding of the specific implications of being a:
 - 4.1.1 a self-employed barrister
 - 4.1.2 an employed barrister
- 4.2 Possess sufficient understanding of organisational and management skills to be able to maintain an effective and efficient practice
- 4.3 Plan their personal workload and absences so as to ensure they deliver on all work commitments they have made
- 4.4 Understand the organisational systems or structures within which they work and which support their delivery of a professional service
- 4.5 Maintain the confidentiality of their clients' affairs, adopting secure technology where appropriate
- 4.6 Exercise good time keeping in face-to-face or telephone encounters
- 4.7 Where necessary, be diligent in keeping good records and files of cases

Assessment

The centralised assessment comprises six questions, each having two sub-parts. All parts are equally weighted. Responses are required in the form of narrative prose (short answers). Questions consist of scenarios, each of which requires the candidate to engage with one or more issues, applying ethical principles in order to identify, critically analyse and address the matters raised and to reach an appropriate resolution of those issues. In order to be successful, therefore, candidates must apply their knowledge of ethical principles and, using the provisions of the BSB Handbook, guidance and other syllabus materials, provide comprehensive analysis and sound reasoning in their answers.

Candidates' answers will be classified as either satisfactory (competent) or unsatisfactory (not competent).

Classification of Profiles of Answers

Answers will be classified as follows:

Satisfactory (Competent)	A competent answer demonstrating satisfactory understanding of the key issues, but with some inaccuracies and/or omissions. Such inaccuracies and/or omissions do not materially affect the integrity of the answer. Analysis and/or evaluation is present but may not be highly developed. Evidence of insight, but it may be limited. Use of appropriate information and principles drawn from syllabus materials. Shows an awareness of the key issues, and comes to appropriate conclusions.
-----------------------------	--

A competent answer may exceed these minimum criteria.

Unsatisfactory (Not competent)	Poor understanding of the key issues with significant omissions and/or inaccuracies. Limited or completely lacking in evidence of understanding. Interpretation, analysis and/or evaluation is shallow and poorly substantiated. Little or no evidence of insight. Limited use of information and principles. Not evident that syllabus materials were understood and/or incorporated into answer. Shows a very limited awareness of the key issues and fails to come to appropriate conclusions.
--------------------------------------	---

Standard setting and marking

The identification of the level of candidate performance that, for the purposes of any given question, should attract a grading of “Satisfactory” (ie minimally competent) will be determined by a process of standard setting. Standards setters (a combined pool of practising barristers and academics) will consider a sample of scripts, mindful of the context in which the assessment has been conducted, namely:

- Candidates have had exposure to professional practice for a minimum of three months (or have been exempted from Bar Training, or certain parts of Bar Training as a Transferring Qualified Lawyer)
- Candidates have successfully completed the vocational element of training, including foundation level Professional Ethics (or have been exempted from Bar Training, or certain parts of Bar Training as a Transferring Qualified Lawyer)
- The assessment is a three-hour-long open book exam requiring candidates to apply their knowledge of Professional Ethics

The parameters the standard setters will bear in mind in determining the pass standard for any sub-part will include:

1. The Threshold criteria identified within *The Professional Statement*
2. Definitions of answer classifications (Satisfactory and Unsatisfactory).

Standard setters will also bear in mind that since the Professional Ethics assessment is one of the critical progression points², a competent candidate must demonstrate that they are “comfortably safe” ie they have demonstrated a level of competence commensurate with the granting of a full practising certificate, taking into account performance for each sub-part and across the paper as a whole, such consideration necessarily requiring regard for the need for protection of the public, in particular the administration of justice and the lay client’s interests.

Following the sampling exercise a standard setting meeting is convened to discuss and agree the pass standard for each sub-part of each question. Marking guidance comprising articulation of the definitions of answer classifications and specific sub-part guidance are produced for markers to apply during the marking exercise. The agreed pass standard will then be communicated to markers for consultation and subsequent application in the live marking process.

Passing the Assessment

Candidates will receive an overall grading of either “Competent” or “Not Competent.” Subject to the provisions on “clearly incorrect” answers below, in order to be awarded a grading of Competent, a candidate would normally be expected to have achieved a grading of satisfactory in respect of 8 out of 12 question sub-parts. In order to ensure

² A full practising certificate may only be granted when a pupil has passed all pupillage requirements and his/her/their pupil supervisor “signs him/her/them off”

rigour of assessment, and fairness to candidates, scripts demonstrating 8 satisfactory answers and those narrowly failing to achieve this figure will be subject to an holistic review to determine whether or not a candidate has achieved an overall grade of competent ie it is safe to allow the candidate to proceed to practise.

Treatment of answers containing clearly incorrect material or where the candidate has failed to make genuine attempts to engage with the subject-matter of the question (including failure to provide any answer at all)

“Clearly incorrect” answers to three or more sub-parts

If a candidate provides answers to three or more sub-parts containing material which, in the view of the examiners, is so clearly incorrect that, if it were to be replicated in practice, it could significantly affect the client’s interests or the administration of justice (such acts or omissions would include behaviour which would require reporting to the BSB) and/or place the barrister at risk of a finding of serious misconduct, the candidate will be graded Not Competent overall, regardless of the grades awarded in other sub-parts.

Answers to three or more sub-parts which are not, in the view of the examiners, genuine attempts to engage with the subject-matter of the question

A candidate who, in the view of the examiners, fails to make a genuine attempt to engage with the subject-matter of the question in three or more sub-parts (eg the candidate’s response amounts only to *“I do not know the answer to this question, but I would telephone my supervisor for assistance”*) will be treated in the same manner as a candidate who provides “clearly incorrect” answers to three or more sub-parts (for which, see above).

Failure to provide any answer to three or more sub-parts

For the avoidance of doubt, a candidate who fails to provide any answer to three or more sub-parts will be treated in the same manner as a candidate who provides “clearly incorrect” answers to three or more sub-parts (for which, see above).

CEB Procedures

For the minority of scripts which are handwritten, markers are instructed not to award marks where an SAQ answer has been deemed illegible by the CEB.

All scripts will be subject to blind marking. Marking will be moderated.

ANNEX

Extracts from Professional Statement

1.1 *Uphold the reputation of the Bar and observe the duty to the court in the administration of justice*

- a) *Thoroughly recall and comprehend the Core Duties and their interrelationship.*
- b) *Ensure that their conduct consistently justifies their clients' and colleagues' trust in them and the public's trust in the profession by:*
 - i. *applying the Core Duties and in particular their paramount duty to the court in the administration of justice;*
 - ii. *complying with regulatory requirements set down by the Bar Standards Board, including the Code of Conduct [1.16]; and*
 - iii. *demonstrating a thorough comprehension of the Professional Statement for Barristers.*

1.4 *Have an awareness of the wide range of other organisations supporting the administration of justice*

- a) *Be aware of the wide range of organisations supporting the administration of justice and their respective roles.*
- b) *Be able to identify and advise clients of alternative sources of advice and funding available to them, as appropriate.*
- c) *Understand the implications for the conduct of the case and the additional responsibilities owed in circumstances where the client is publicly funded or otherwise not self-funded.*

1.6 *Provide clear, concise and accurate advice in writing and orally and take responsibility for it*

- a) *When giving advice take into account the client's circumstances and objectives.*
- b) *Ensure that advice is informed by appropriate analysis, synthesis and evaluation and where appropriate identifies and evaluates the consequences of different options.*

1.10 *Make sound judgments in their work.*

- a) *Apply effective analytical and evaluative skills to their work [1.5].*
- b) *Ensure that they act independently so that their judgements are not influenced by external pressures.*
- c) *Take responsibility for their decisions.*

1.11 *Ensure they are fully prepared*

a) *Ensure that they are fully prepared in order to act in the best interests of the client [3.1] and provide a competent standard of work and service to the client.*

1.16 *Comply with the regulatory requirements set down by the Bar Standards Board, including the Code of Conduct*

a) *Identify the most recent Code of Conduct and other applicable rules and regulations relevant to their practice and the conduct of any matters they are dealing with.*

b) *Recognise potential ethical situations and identify ethical issues.*

c) *Be aware of and make effective use of relevant guidance, advice and support regarding ethical issues.*

d) *Behave ethically and consistently act in accordance with the Code of Conduct and other applicable rules and regulations.*

1.17 *Know how to conduct themselves appropriately in court*

a) *Use the required dress, accepted forms of address, observe formalities of proceedings and follow established conventions and customs in each forum where they represent clients.*

1.18 *Only accept work which they believe they are competent to undertake*

a) *Recognise and operate within the limits of their competence.*

b) *Explain clearly the limits of their competence and knowledge to relevant others.*

c) *Consult relevant others, where appropriate.*

d) *Make an informed judgment on the level of knowledge, skills and attributes required in a particular case.*

e) *Decline to act where the Code of Conduct requires them to do so.*

2.1 *Act with the utmost integrity and independence at all times, in the interests of justice, representing clients with courage, perseverance and fearlessness*

a) *Identify situations where their integrity and/or independence may be put at risk.*

b) *Act with integrity including:*

i. *Identifying and avoiding personal bias;*

ii. *Maintaining their independence from external pressures; and*

- iii. *Identifying potential conflicts of interest, being open about conflicts of interest, declaring conflicts of interest formally and being prepared to exclude themselves from acting.*

c) *Uphold the reputation of the Bar and observe their duty to the court in the administration of justice [1.1].*

d) *Comply with regulatory requirements set down by the Bar Standards Board, including the Code of Conduct [1.16].*

e) *Take responsibility for their actions and decisions.*

2.2 *Be honest in their dealings with others*

a) *Comply with regulatory requirements set down by the Bar Standards Board, including the Code of Conduct [1.16].*

b) *Ensure that they are honest about the limits of their knowledge, their experience, qualifications and professional status.*

c) *Ensure that to the best of their knowledge and belief any information they give is accurate, true and not likely to mislead.*

2.3 *Be aware and active in the pursuit of equality and respect for diversity, not tolerating unlawful discrimination, in themselves or others*

a) *Actively observe and uphold the law on equality, diversity and discrimination.*

b) *Be alert to the potential for unconscious bias.*

c) *Take active steps to act fairly and inclusively and show respect to others.*

d) *Identify situations where there is a risk of breach of the law on equality and diversity.*

e) *Promote diversity in the workplace and where appropriate challenge others if their behaviour does not comply with the spirit of the law relating to equality diversity and discrimination.*

2.4 *Ensure their work does not incur unnecessary fees*

a) *Ensure that, where fees are chargeable, the basis for charging fees is established with the client at the outset of any matter.*

b) *Follow those arrangements in an efficient and cost effective manner, ensuring that any necessary changes to the arrangements are agreed with the client.*

c) *Undertake work that promotes the client's best interests*

d) *Progress matters expeditiously.*

2.5 *Adopt a reflective approach to their work, enabling them to correct errors and admit if they have made mistakes*

- a) *Recognise limitations of personal knowledge and skills and act to resolve the situation.*
- b) *Take appropriate action when experiencing difficulties with work that is beyond their professional competence and disclose as appropriate.*
- c) *Identify their errors of judgement, omissions and mistakes and take appropriate action.*
- d) *Ask for and make effective use of feedback, guidance, advice and support.*
- e) *Take appropriate action to manage personal difficulties that might otherwise affect their work.*

2.6 *Ensure they practise with adaptability and flexibility, by being self-aware and self-directed, recognising and acting upon the continual need to maintain and develop their knowledge and skills*

- a) *Take responsibility for planning and undertaking personal development and learning.*
- b) *Identify strengths and areas for development and take positive steps to address them.*
- c) *Reflect on and learn from their own and others' performance and achievements.*
- d) *Maintain and develop relevant knowledge and skills.*
- e) *Regularly take part in activities that maintain and develop their competence and performance.*

3.1 *Understand and exercise their duty to act in the best interests of their client*

- a) *Provide a competent standard of work and service to each client.*
- b) *Identify the client's best interests in accordance with the client's lawful instructions.*
- c) *Recognise and evaluate any conflict between the client's best interests and their duty to the court, their obligation to act with honesty and integrity and to maintain their independence.*
- d) *Ensure that subject to c) above they do not act contrary to the client's lawful instructions.*
- e) *Act in accordance with the Code of Conduct and other applicable rules and regulations.*

3.2 Understand and apply principles of team working where appropriate

- a) Work collaboratively with others, respecting their skills and contributions.*
- e) Understand the relationships between counsel, pupil, clerk and solicitor.*
- f) Delegate and supervise others effectively.*
- g) Establish and maintain effective professional relations with others.*

3.3 Respond appropriately to those from diverse backgrounds and to the needs and sensitivities created by individual circumstances

- a) Be aware and active in the pursuit of equality and respect for diversity [2.3].*
- b) Provide information in a way that others can understand taking into account their personal circumstances and any particular vulnerability.*
- c) Recognise and respond effectively to others' particular needs, objectives, priorities and constraints.*
- d) Recognise and take reasonable steps to meet the particular needs of clients including those who are disabled or vulnerable.*

3.4 Treat all people with respect and courtesy, regardless of their background or circumstances

- a) Demonstrate suitable professional practice, politeness and respect in communication and personal interactions with others.*
- b) Recognise people's differences and modify their behaviour where appropriate to take account of those differences.*

3.5 *Where appropriate, keep clients, whether lay or professional, informed of case progress in a clear and timely manner and manage their expectations*

a) *Identify the level of their responsibility to consult with and to communicate case progress to a particular client.*

b) *Inform clients in a timely manner of key facts and issues including key dates, risks, progress towards objectives and costs.*

c) *Identify and evaluate possible courses of action and their consequences and assist clients in reaching a decision.*

d) *Manage clients' expectations including in relation to options, the range of possible outcomes, risks and timescales.*

e) *Respond appropriately to clients' concerns and complaints.*

3.6 *Demonstrate a good awareness of their additional responsibilities in cases involving direct access and litigants in person*

a) *Adapt their communication and handling of the matter to ensure that public access clients are fully informed of the actions which are being taken on their behalf and the purpose and possible consequences of those actions.*

b) *Recognise and appreciate the position of opponents not represented by qualified legal advisors (litigants in person).*

c) *Understand the professional duties to the litigant in person, the court and their own client, which arise when appearing against the litigant in person, and the potential effect on the handling of the matter.*

d) *Act in accordance with the Code of Conduct and other rules and regulations applicable to public access clients or litigants in person.*

4.1 *Where appropriate, possess a strong understanding of the specific implications of being:*

4.1.1 *a self-employed barrister*

a) *Demonstrate a thorough understanding of the scope of practice rules relevant to a self-employed barrister.*

b) *Demonstrate a thorough understanding of the context in which they work (including commercial, organisational and financial) and their place in it.*

4.1.2 an employed barrister

a) Demonstrate a thorough understanding of the scope of practice rules relevant to an employed barrister.

b) Demonstrate a thorough understanding of the context in which they work (including commercial organisational and financial) and their place in it.

4.2 Possess sufficient understanding of organisational and management skills to be able to maintain and effective and efficient practice

a) Be competent in all aspects of their work, including organisation, management of practice and risk.

Competent organisation includes:

i Keeping accurate records (including financial records and time recording) and files, electronic or hard copy;

ii Allocating time efficiently;

iii Prioritising;

iv Diarising;

v Observing deadlines;

vi Using resources (including IT systems) effectively; and

vii Being fully prepared.

Competent management includes:

i Planning;

ii Putting in place human and non-human resources;

iii Coordinating;

iv Leading or directing;

v Checking progress against plans to accomplish the goal or target; and

vi Financial management.

Competent risk management includes:

i Identifying, evaluating and measuring the probability and severity of risks to their practice; and

ii Proactively deciding what to do about risks and acting appropriately.

4.3 *Plan their personal workload and absences so as to ensure they deliver on all work commitments they have made*

- a) *Clarify instructions so as to agree the scope and objectives of the work.*
- b) *Make an informed judgement on the time required to prepare a matter.*
- c) *Take account of their availability and that of other resources.*
- d) *Decline to act where there is insufficient time and opportunity to prepare.*
- e) *Prioritise and plan workload to meet commitments.*
- f) *Meet timescales, resource requirements and budgets.*
- g) *Monitor and keep relevant others informed of progress and availability.*
- h) *Deal effectively with unplanned circumstances and re-prioritise as necessary.*

4.4 *Understand the organisational systems or structures within which they work and which support their delivery of a professional service*

- b) *Understand the basis on which legal services are provided (contractual or otherwise) including, where appropriate, how to calculate and manage costs, bill clients and the operation of internal budgets for legal advice.*

4.5 *Maintain the confidentiality of their clients' affairs, adopting secure technology where appropriate*

- a) *Identify how they will act in accordance with the Code of Conduct and other rules and regulations applicable to maintaining the confidentiality and security of information relating to third parties including that of their current and former clients.*
- b) *Comply with relevant data protection requirements.*

4.6 *Exercise good time-keeping in face-to-face or telephone encounters*

- a) *Attend all appointments punctually and as fully prepared as possible in the circumstances.*

4.7 *Where necessary, be diligent in keeping good records and files of cases*

- a) *Identify when compiling and keeping records and files is their responsibility.*
- b) *Prepare and compile appropriate records at the same time or as soon as possible after the events that they are recording.*

c) Ensure records are clear, accurate and legible and contain sufficient detail for their purpose.

d) Organise records so that they are retrievable by themselves and other authorised persons as appropriate.