



# Response to the Bar Standards Board Curriculum and Assessment Review

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Produced for the ALT Executive Committee by Prof Nigel Duncan, Gemma Davies and Emma Piasecki

1. CENTRALISED ASSESSMENT STRATEGY		
<p>1.1 Professional ethics to be removed as a separate centralised assessment.</p>	<p>The assessment of ethics in its current format requires some adjustment to ensure that it reflects its underpinning importance to professional practice and responds to concerns raised about ethical awareness in early career professionals. Professional Ethics should be removed as a separate centralised assessment and should be tested in alternative ways (see below). It is anticipated that the removal of an assessment should reduce costs.</p>	<p>There is merit in the removal of Professional Ethics as a separate centralised assessment in its current format. However, given the centrality of Professional Ethics to practice at the Bar, it will be important to manage the impression that may be given if the discrete assessment is abandoned.</p> <p>One of the weaknesses of the current approach is that ethics questions are clearly labelled as such, which is not reflective of practice. However, incorporating ethical questions into skills subjects, whilst moving some way towards the realities of practice, is notoriously difficult to achieve realistically in assessments - there is a very limited number of ethical dilemmas that would realistically arise in the kind of scenario appropriate to an advocacy or conferencing assessment.</p> <p>One proposal is the continued, but less expansive, testing of the knowledge at BPTC stage (potentially on a pass/fail basis –at the Threshold Standard) combined with a practice based assessment, perhaps in viva format, at the end of the first six of pupillage to test the crucial understanding of ethical principles within a practical context.</p> <p>Whether or not the removal of this assessment will reduce costs will depend on how ethics is assessed in the future.</p>
<p>1.2 Civil and Criminal Litigation to remain centrally assessed.</p>	<p>A comprehensive understanding of litigation and procedure is an important aspect of a barrister’s role and, as such, a key point of assurance for the protection of the public. The ‘knowledge subjects’ can be reliably tested using multiple choice questions</p>	<p>We agree with the proposal that these subjects continue to be centrally assessed, in order to ensure standards across providers. We remain concerned that research evidence suggests</p>

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	<p>("MCQs"), which readily lend themselves to centralised testing. This will also allow for the two-stage model to be operationalised, which could reduce candidate financial risk and given the reduction in risk increase accessibility.</p>	<p>that assessments using MCQs (or SBA questions) may have a discriminatory impact on certain groups and thus damage the regulatory objective of encouraging diversity and widening participation. We appreciate that the BSB shares these concerns. Continuing to require passing this type of assessment as a central part of the overall assessment should be subject to the BSB satisfying itself that these problems for diversity can be overcome.</p> <p>Although we recognise that this gives providers the flexibility to operate a two-stage model, we would regret it if that became the dominant model. This is because we regard the shallow approach to learning encouraged by these assessments is damaging and inefficient and is better mitigated by students integrating their learning of this knowledge with their development of the practical skills in which they apply it.</p>
1.3 Civil Litigation to have an additional assessment.	<p>Given the difference in syllabus size between Criminal and Civil Litigation, there should be an additional civil litigation assessment to ensure future barristers are appropriately tested as to their knowledge. This would allow for costs and other important areas to be tested.</p> <p><i>Civil Litigation I</i> should be 'closed book' with <i>Civil Litigation II</i> being 'open book'. The 'closed book' assessment will test knowledge that the BSB feel is essential knowledge. This might include, by way of example only, ADR: methods, differences, advantages, disadvantages, practice and procedure and pre-action protocols whereas the 'open book', with a separate syllabus, can test wider and more specialist knowledge with the ability to navigate permitted</p>	<p>There are conflicting issues here. On the one hand the BSB should be seeking to minimise assessments, to avoid over-assessment. On the other there is a desire to ensure coverage of a wide syllabus. While the increased attention paid to costs and the many different applications that can arise in civil proceedings has led to a growth of the civil litigation syllabus the criminal syllabus remains extensive and, in particular, the complexity and difficulty of criminal evidence should not be understated. We are sceptical as to whether the difference justifies the introduction of a second civil litigation assessment.</p>

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	<p>materials. Again, by way of example only, this might include identifying suitability of appropriate methods taking account of a client’s specific circumstances. Consideration would need to be given to ensure the open book paper does not discriminate against certain types of student.</p> <p>The civil assessments could each be of 2 hours in duration, allowing candidates feasibly to do both examinations in a single day, although consideration must be given to those who require reasonable adjustments through disability or their location. All questions on both assessments would be MCQ/SBA. It would need to be clear which parts of the syllabus are covered by each assessment.</p> <p>This will also allow for a broadening of the civil syllabus to incorporate Resolution of Disputes Out of Court (“REDOC”) and incorporate some ethics questions as well. The ‘merging’ of some assessments will reduce costs.</p>	<p>In our view it remains a valid regulatory objective to require students to study the full syllabus identified by the BSB. This, however, does not require every element to feature in each assessment. Indeed, this would be impossible in the time available, even in an extended assessment. So the selection of questions should be from diverse areas of the syllabus, with some variation from sitting to sitting, so that a restricted pattern does not arise. Moreover, given that there have been criticisms of some recent papers that some questions have focussed on minutiae that do not arise regularly in the early years of practice, questions should address major issues that pupils and junior barristers are likely to encounter. This best meets the regulatory objective of demonstrating candidates’ preparedness for pupillage without imposing inappropriate obstacles.</p> <p>We note that the proposal involves increasing the Criminal Litigation syllabus by adding questions addressing Professional Ethics; and the Civil Litigation syllabus by adding both Professional Ethics and REDOC. This will inevitably reduce the number of questions available for the existing Criminal Litigation syllabus and (given the proposed extension of the time for Civil Litigation by a mere 30 minutes) for the existing Civil Litigation syllabus as well. For the reasons explained above we do not regard this as a problem provided the setters of these assessments develop a mind-set that ensures broad coverage of key issues rather than questions that explore recondite points.</p> <p>If the proposal to introduce two 2-hour civil litigation</p>

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		<p>assessments were to be adopted (see our comment below), we support the proposal that the second 2-hour assessment should be open book as this will better reflect the realities of practice. We also agree that the two assessments should address different parts of the syllabus and that this be made clear to candidates in advance. However, we would urge the designers of the assessment to note that where students are able to refer to practitioner texts, their own notes, etc., they will be able to answer fewer questions.</p> <p>We support consideration of whether open book assessments are more appropriate in both civil and criminal litigation. However more assessment is not welcomed. One assessment, if approached as set out above, can test the current civil syllabus. The purpose of the BPTC must remain in focus – there is currently a huge emphasis on the knowledge subjects (as a result of centralised assessments) at the expense of skills. Increasing the assessment burden on knowledge will further marginalise the skills which many would argue should be the focus of the BPTC.</p> <p>We note the caution expressed in assuring that the open book assessment will not discriminate against ‘certain types of student’ but would draw the BSB’s attention that this concern applies to closed book assessments using MCQs as well as open book assessments.</p>
1.4 Criminal and Civil Litigation assessments to include ethics.	Given the proposed deletion of a separate ethics assessment, some ethics questions should be inserted into each of the centralised assessments. It may be deemed appropriate to include	While we recognise the value of incorporating ethics questions into the civil and criminal litigation assessments, we are concerned about the scale of

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	<p>ethical issues within the open book civil assessment to allow candidates refer to the Code of Conduct, which is more realistic of practice.</p>	<p>those revised assessments and the balance between them. We suggest above an approach that may mitigate these concerns.</p> <p>We agree that placing the ethics questions in the open book Civil Litigation assessment is appropriate as it better reflects the realities of practice. However, we note that there is no equivalent proposal for Criminal Litigation, leaving ethics in the criminal context to be assessed in a manner that relies on rote learning as opposed to clear understanding and application to practice. We consider that it is worth exploring the possibilities of revisiting this question. Might it be possible, for example, to allow students to take a copy of the Code of Practice into the Criminal Litigation assessment but to treat it otherwise as a closed book examination?</p>
<p>1.5 Timing of centrally set assessments twice per year i.e. No change</p>	<p>To enable current and future providers to design their courses around set points in the year two opportunities each year should be offered for all centralised assessments. Consideration will be needed with regards to the timings of the assessments to ensure they are practicable.</p>	<p>We agree that having two appropriately-set runs of the CEB assessments continues to be appropriate, but would seek a longer space between each assessment. Currently students are placed under extreme stress, having to prepare for two major assessments within a very short time-frame for purely administrative reasons.</p>
<p><b>2. ASSESSMENT STRATEGY</b></p>		
<p>2.1 Professional Ethics – alteration of assessment strategy.</p>	<p>Further to the observations above with regard to the assessment of professional ethics, it is recommended that it should be amended and blended into other assessments as follows:</p> <p><i>Criminal Litigation</i> – A small number of ethical questions should be included in the assessment.</p>	<p>We agree, in theory, with the proposal to blend the ethics assessment into other assessments, in part because it means that ethics issues will arise unflagged. In our view, however, there is a number of difficulties with this proposal.</p> <p>Currently Professional Ethics is assessed by a 2.5 hour</p>

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	<p><i>Civil Litigation II (open book)</i> – A small number of ethical questions should be included in the assessment. Given this assessment will be open book, candidates may be properly tested on the more complicated parts of the code.</p> <p><i>Conference Assessment</i> – the candidate should be asked an ethical question by the client either during the conference or at the end.</p> <p><i>Advocacy Assessment</i> – the candidate should be asked an ethical question at the end of the assessment by either the judge or witness.</p> <p>There would need to be separate syllabuses (or parts thereof) for the written and Conference/Advocacy assessments.</p> <p>It is proposed that the marks obtained for professional ethics across the different assessments would be aggregated</p>	<p>paper composed of 6 SAQs. There is no proposal to increase the length of the Criminal Litigation assessment and the proposal to increase the length of the Civil Litigation assessment is, in fact, only by 30 minutes. There is a reference to a ‘small number’ of ethics questions in each. It seems doubtful that this can reasonably cover as much of the syllabus as is covered at present, with consequences of risk to clients. Therefore we recommend a review of the approach to question choice and setting, as suggested in 1. 3 above.</p> <p>It is not accepted, however, that more assessment, particularly more assessment of the ‘knowledge’ subjects is appropriate. The increased emphasis on knowledge is at the expense of skills – in terms of the allocation of teaching time but also, more crucially, in the minds of the students. The previously paramount desire to become the best advocate they can be is often replaced by a desire to pass the centralised assessments.</p> <p>The proposal recognises that the ethics questions in the Civil assessment should be in the Open Book part of the assessment. However, it seems that the ethics questions in the Criminal Litigation assessment should be closed book and MCQ. This is inappropriate and unrealistic of practice. See our proposal in 1.4 above.</p> <p>We support, in general, the proposal that professional ethics issues should be inserted into skills assessments, both oral and written. We note, however,</p>

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		<p>that this is difficult to do well and realistically. We therefore recommend that the BSB undertake research into how this might best be done and establish an advisory group drawn from providers to establish best practice. In respect of the specific proposals for conference skills and advocacy we have the following observations.</p> <p>Conference assessment: we agree, in principle, with the embedding of an ethical issue into the conference skills assessment. This should be done by a question that the client (presumably played by an actor or tutor) puts to counsel during the conference. It should not be a question at the end of the assessment. This is impractical, as it is not possible to predict what will have been covered in the conference by any particular point, and it fails the test of the ethics issue arising unflagged. Moreover, experience demonstrates that this is incredibly difficult to achieve as there is a very limited number of ethical issues that would realistically arise at this stage.</p> <p>Advocacy assessment: we agree with the embedding of an ethical issue into one of the advocacy assessments. This, however, should be done during the assessment and not at the end, for the reasons presented above in respect of Conference skills. Again, however, experience demonstrates that this is incredibly difficult to achieve, as there is a very limited number of ethical issues that would realistically arise at this stage which could be appropriately dealt with in the context of the advocacy assessment.</p>

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		<p>It should be noted that ethics is already assessed in both advocacy and conference assessments with ethical errors either reducing the student’s mark under the existing criteria or leading to a ‘red light’ fail.</p> <p>We agree that there should be separate syllabi for the different assessments within which ethics issues are raised, although there may be overlap.</p> <p>There is also a lack of clarity around aggregating the marks for professional ethics What happens if a student passes an assessment while failing the ethics element? How will a resit be organised? Setting specific assessments for different types of failure could prove costly.</p>
<p>2.2 Opinion Writing – to remove this as an examination and make it coursework/take away assessment.</p>	<p>Opinion writing is currently assessed through examination, mainly because of the risks of collusion/plagiarism; this is not realistic of practice.</p> <p>Given the advances made with software designed to detect plagiarism and collusion there appears a reduced need to maintain this position. As such, and in order to appropriately facilitate the reintroduction of a legal research assessment, opinion writing should no longer be assessed by examination. Consideration will need to be given to how take away assessments might work for part-time students.</p>	<p>We agree with this proposal, but, given the limitations of plagiarism software (which cannot catch the product of essay mills or student collusion), we would recommend a short period between hand-out of the assessment papers and return of the finished answer.</p> <p>Anti-cheating software does not catch more intelligent cheaters – but we do not think that the risk of this should prevent the introduction of a more appropriate assessment for the majority. Short turnaround times have previously caused systems issues with providers, but more importantly there is a risk of unfairness to part time students and those with responsibilities outside of study who cannot access a clear 24 or 48 hours for completion.</p>

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		In our view the value of introducing the greater realism of a take away assessment justifies careful consideration of the circumstances of part-time students and others with challenging commitments.
2.3 Resolution of Disputes Out of Court (REDOC) – removal of a separate exam	The knowledge associated with the Resolution of Disputes Out of Court should be included within the Civil Litigation assessments where it more naturally locates.	We do not disagree in principle with this proposal but are concerned that too much is being incorporated into the proposed new Civil Litigation assessments. See discussion in 1.3 above.
2.4 Negotiation Skills – introduction of training to be undertaken by the Inns	Competence in negotiation skills is required by the Professional Statement, though reintroducing it into the vocational stage of training may not be the most appropriate way forward. Pupils and barristers have long identified that training and testing negotiation skills during the BVC was overly clinical and not realistic of practice. As such, it is more appropriate that the skills for negotiation and mediation should be developed during work-based training and possibly by the Inns.	<p>We disagree that negotiation and mediation advocacy skills should only be developed during work-based training and/or by the Inns. Unless students experience practice in this area their understanding of ADR will be theoretical only and they will not develop the contextual understanding required.</p> <p>Reintroducing negotiation skills would act as a foundation for further development in work-based learning, much as the advocacy currently taught on the BPTC acts as a foundation for the advocacy training during pupillage.</p> <p>The criticisms of negotiation on the BVC were focussed more on the unrealism caused by students negotiating with each other, not with any ‘over-clinical’ approach. This can be remedied by using different assessment methods.</p> <p>To limit negotiation skills to the work-based learning stage fails to give effect to recommendation 13 of LETR. It also risks being anti-competitive and limiting innovation in the market.</p>

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2.5 Reintroduction of Legal Research into the BPTC	The Professional Statement requires that barristers are competent in legal research. It is not appropriate for this to be properly tested or taught practically within the undergraduate law degree. As such, it is proposed that a Legal Research assessment be tied with the Opinion Writing assessment. Whilst this will mean an additional assessment, conjoining it with another assessment will minimise any cost increase.	We agree with this proposal, and agree that it is best combined with the Opinion Writing assessment. This will save the cost of an additional assessment. Care will need to be taken with the form of the LR assessment as that which was carried out on the BVC was widely seen as formulaic and not reflecting what would be required in practice.
2.6 Removal of designation of grade boundaries	Vocational courses in many other professional fields use pass/fail or provide a transcript. As a regulatory body, the BSB must assure only that all successful candidates are competent to practice in line with the requirements of the Professional Statement and to meet the Threshold Standard. Having one, consistently maintained, standard should provide greater fairness for all candidates and less demarcation by age, race, gender and degree classification. It minimises any potential risk of grade manipulation whilst allowing all candidates to achieve as highly as possible, which will be reflected in the percentage transcript received from their providers. It should also remove a potential distraction when assessing applicants for pupillage and allow applicants to be considered more holistically. Of course, providers will be free to offer gradings commensurate with academic achievement on their courses.	<p>Simply establishing a pass mark is sufficient to meet the regulator's concern to establish competence to practice. However, removing the grade boundaries risks removing a motivation to excel, which may have a damaging effect on students' individual learning experience and their engagement with their studies. Research should be conducted into whether, in other professional examinations, removal of grade boundaries has been found to have this effect. If this proposal is adopted, the actual marks in centrally assessed examinations should also be published so that providers can prepare a full transcript of attainment for each of their students.</p> <p>The removal of gradings also removes the opportunity for students to demonstrate their excellence in a clearly identifiable way – which can be particularly important for those students from less prestigious universities (who may also be the target of greater diversity efforts) and /or those with lower degree classifications. This may undermine the regulatory objective of increasing diversity.</p> <p>The reality is likely to be that if the BSB does not assign</p>

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		grade boundaries – providers will – and these may not be consistent. This is not in the interests of the students or the profession.
<b>3. CURRICULUM</b>		
3.1 BSB syllabus prescription for centrally assessed exams only. For other subjects, no prescribed teaching and learning, formative assessments etc. requirements will be made.	The Professional Statement sets out the knowledge, skills and attributes required – the centralised assessments test knowledge. Providers, current and new, will need to demonstrate how their course enables students to achieve the skills and attributes overall, but the resource requirements and minimum pedagogical requirements will be removed. This will mean the course could be delivered more flexibly and could be shorter in duration, leading to reduced cost and greater accessibility.	We agree with the flexibility inherent in the new framework.
3.2 Options – to be no longer prescribed.	Flexibility for providers not to offer Options leading to a shorter course at a reduced cost to the student. Providers could offer Options with greater freedom in subjects and assessment. Students could decide to take Options at a later stage, for financial reasons or more directly related to their area of practice.	We agree that this proposal has the potential to provide greater flexibility for providers and may act to reduce costs. However, any such reduction is unlikely to be significant given the ‘fixed’ costs. We also note that the options on the BPTC have had significant value in enabling students to pursue an area of their choice and in encouraging innovation. It also provides the only specialist training pre-pupillage and will provide some students (particularly those with limited previous access to the profession) the opportunity to determine their areas of interest and demonstrate a commitment to it/ them. It is therefore our view that the BSB should find a way of expressing encouragement for students to undertake extra study options to develop their knowledge and expertise if they no longer require it.
<b>4. QUALITY ASSURANCE</b>		
4.1 Creation of subject specialist lead examiners for	Differences exist in assessment instruments across providers and to ensure a greater degree of consistency across the piece and	We agree that specialist external examiners, reviewing the work of different providers, perhaps leading small

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each of the core non-centrally assessed areas	provide appropriate oversight, subject specialist lead external examiners should be appointed with responsibility for given areas of specialism and who will have responsibility to review assessments prepared by providers across that area of specialism.	teams if the quantity of work demands it, is the best way of ensuring standards are maintained.
4.2 Specialist External Examiner Training	The professional backgrounds of external examiners are as broad as they are wide and this must be seen as a positive. It is important that external examiners should have an understanding of what constitutes a fair and rigorous assessment instrument. As such it would be reasonable to ensure that all external examiners either have formal training in assessment before appointment to the role or are willing to undertake formal training to assure that they are competent in assessment practice	We agree, but note that this will have cost implications.