



The Inns of
Court College
of Advocacy

Assessment Setting, Marking and Moderation Policy

Updated January 2023

Background

The Bar Standards Board's Professional Statement

The ICCA will develop assessments for Part Two modules that are mapped to the Bar Standards Board's (BSB) Professional Statement (PS). The PS describes the knowledge, skills and attributes that all barristers should have on 'day one' of practice. They cover a broad scope of Competences and the BSB has developed a 'threshold standard' to demonstrate the level of competence a barrister needs at the point of qualification. The threshold standard is defined for each Competence contained in the Professional Statement.

The ICCA adopts the PS as a fundamental starting point for all assessment development. The PS provides a list of all the core Competences that any ICCA Bar Course training must deliver and describes the standards that students must obtain. In order to help students to keep track of their progress and understand how they are progressing towards the threshold standard in any given Competence, the ICCA provides reference to the PS throughout the online Part One course and details, throughout the teaching of Part Two, of the Competences being taught and assessed.

The BSB also prescribes in their 'Curriculum and Assessment Strategy' the modules to be taught and assessed, the assessment criteria and, at a high level, the assessment methodology to be used.

Objectives of this Policy

The objectives of this policy are:

- To ensure that the ICCA assessment regime is robust and fair
- To ensure a consistent approach is taken across the ICCA to assessment setting, marking and moderation

Assessments to which this Policy applies

The ICCA Assessment Setting, Marking and Moderation Policy will apply to marking of the ICCA Bar Course Part Two modules. These modules are:

- Advocacy x3 (Submissions Advocacy, Examination-in-Chief and Cross-Examination)
- Conference Skills
- Opinion Writing
- Drafting
- Professional Ethics

Academic Regulations

Students are referred to sections 21 to 32 of the ICCA Academic Regulations.

Head of Assessments

The Head of Assessments is the Bar Course Leader (BCL) or such other member of the ICCA Academic Team who has been appointed by the Dean of the ICCA.

Lead Assessor

In this policy the Lead Assessor is a member (or members) of the ICCA Academic Team who has been appointed by the Head of Assessments as the Lead Assessor for one or more of the Part Two modules listed above.

Assessment Scrutiny Panel

In this Policy, the Assessment Scrutiny Panel (ASP) will consist of the Head of Assessments, Vice-Dean, and the Directors of Online Learning. It shall be open to the panel to co-opt members of the ICCA Academic Team onto the ASP.

1. Assessment Setting

- 1.1 The ICCA Academic Team is responsible for the setting of assessments on Part Two of the ICCA Bar Course. Assessments will be fair and objective and will comply with the Equality Act 2010.
- 1.2 For each Part 2 Assessment window a main paper ("Main Paper") and a resit paper ("Resit Paper") will be prepared for each module. The papers will then be subjected to the scrutiny and quality assurance processes set out in paragraphs 1.3 – 1.16 below.

Assessment Bundles

- 1.3 For every assessment an assessment bundle must be assembled before an assessment can begin to be scrutinised and quality assured. For the purposes of this policy an assessment bundle will consist of the following:
 - 1.3.1 All documents that will be provided to candidates for the purpose of completing the assessment.
 - 1.3.2 All documents that will be provided to markers for the purpose of marking the assessment.

Internal Scrutiny and Approval of the Assessments

- 1.4 Once assessment bundles for the Main and Resit Papers for a module have been assembled they should be reviewed (1st review) by a member of the Academic Team who is not the author of the assessment. That review must be carried out by a member of the teaching team for that

module or, alternatively, the Head of Assessments may appoint another suitably qualified member of the Academic Team to review the assessment.

- 1.5 The reviewer will provide written comments to the assessment author. Following the 1st review an amended version of the assessment bundle should be produced by the assessment author. The Head of Assessments should then be notified that the assessment is ready to be considered by the ASP.
- 1.6 Once both Main and Resit assessments are ready for consideration by the ASP, the ASP will appoint one of its members to review the assessments and verify that they are suitable for use.
- 1.7 The ASP may require amendments to be made to an assessment bundle prior to verifying that it is suitable for use. Any amendments should be made by the assessment author and a final version of the assessment bundle should be prepared.
- 1.8 Once the final versions of both the Main and Resit assessment bundles have been verified by the ASP, the Lead Assessor will send both assessments to the relevant BSB External Examiner (EE) for approval in good time and in accordance with pre-arranged deadlines.

External Examiner Approval

- 1.9 It shall be for the Lead Assessor to liaise with the EE and make any agreed amendments to the Assessment Bundle prior to its approval by the EE.

Approach to Assessment Setting

- 1.10 In setting assessments, designers and academics will consider the specified learning outcomes of the module and programme as set out in the programme specification and the equal opportunities implications on the form of assessment chosen in accordance with 12.11 and 12.12 of the ICCA Academic Regulations.
- 1.11 Assessment questions or scenarios should not be fundamentally different in terms of difficulty or format from the formative assessment for a module.
- 1.12 The ICCA will comply with any prescription set by the BSB in the Curriculum and Assessments Strategy (CAS) in designing the assessment methodology and marking criteria.
- 1.13 The ICCA expects high standards of professionalism in the assessment process. Academic staff are responsible for ensuring the accuracy of the assessment bundle and that appropriate measures are taken to protect the security of the assessment bundle at all times.
- 1.14 No assessment will be used to assess students more than once in any 18-month cycle. In any event no ICCA student may sit an assessment which uses the same assessment instrument more than once.
- 1.15 Any assessment bundle that is being used again shall be updated to ensure that it reflects any changes to the law or procedural rules or any ICCA assessment regulation or policy since it was last used.

- 1.16 Any problems that are identified as a reason not to use an assessment for the first or on subsequent occasion must be brought to the attention of the Head of Assessments immediately.

2. Marking & Moderation

Pre-Marking Procedure for Oral Assessments

- 2.1 For Conference, Submissions Advocacy, Examination-in-Chief and Cross-Examination assessments, once an assessment has been approved by an external examiner the Lead Assessor should arrange for the assessment to be taken by no less than 2 Bar Course graduates, pupil barristers or junior barristers of under 3 years call. Arrangements should be put in place to ensure that this exercise reflects as closely as possible the conditions that will be faced by ICCA candidates sitting the assessment. The assessment performances should be recorded.
- 2.2 Copies of these performances should then be distributed to each member of the marking team for that assessment. Each marker should independently mark the performance using the appropriate assessment criteria and marksheets. The markers may meet to complete the marking process provided that each marker is given the opportunity to independently mark each performance before any discussions of the performance begin.
- 2.3 Once the independent marking process is complete the Lead Assessor should convene a markers' meeting so that markers can discuss their marks. Markers can attend in person or remotely and if a marker is unable to attend the meeting it should be recorded.
- 2.4 The aim of the meeting is to reach a consensus as to the appropriate marks for the sample performances, to ensure consistency in the marking process. This will also enable the markers to set indicators for the determination of fail, pass, merit, distinction grades to be applied for each assessment criteria during the marking process. The Lead Assessor shall have the authority to make final decisions in the event that a consensus between markers is not possible.
- 2.5 It is the responsibility of the lead assessor to ensure that minutes of the meeting are produced and distributed to all markers. The Lead Assessor will also provide any additional guidance for markers that they deem necessary. Any additional guidance should be in writing and available for inspection by the Head of Assessments and EE.

Alternative Procedure

- 2.6 In circumstances where it is not practicable to follow the procedure in 2.1-2.4 (e.g. where there are only a small number of candidates) the following alternative procedure should be adopted.
- 2.7 The lead assessor will arrange for each marker to be sent the performances of 2 candidates. All markers should receive the same performances. Each marker should then independently mark the performances using the criteria and marksheets for the assessment. The markers may

meet to complete the marking process provided that each marker is given the opportunity to independently mark each performance before any discussions of the performance begin.

- 2.8 The lead assessor should then hold a markers' meeting before any other marking for the assessment is undertaken. Markers can attend in person or remotely and if a marker is unable to attend the meeting it should be recorded.
- 2.9 The aim of the meeting is to reach a consensus as to the appropriate marks for the sample performances, to ensure consistency in the marking process. This will also enable the markers to set indicators for the determination of fail, pass, merit, distinction grades to be applied for each assessment criteria during the marking process. The Lead Assessor shall have the authority to make final decisions in the event that a consensus between markers is not possible.
- 2.10 It is the responsibility of the lead assessor to ensure that minutes of the meeting are produced and distributed to all markers. The Lead Assessor will also provide any additional guidance for markers that they deem necessary. Any additional guidance should be in writing and available for inspection by the Head of Assessments and EE.

Pre-Marking Procedure for Written Assessments

- 2.11 For Opinion Writing and Legal Research and Drafting the lead assessor will arrange for each marker to be sent copies of no less than 3 candidates' assessment submissions. All markers should receive the same submissions. Each marker should then independently mark the submissions using the criteria and marksheets for the assessment.
- 2.12 The lead assessor should then hold a markers' meeting before any other marking for the assessment is undertaken. Markers can attend in person or remotely and if a marker is unable to attend the meeting it should be recorded.
- 2.13 At the markers' meeting the scripts of those candidates whose submissions have been independently marked will be discussed between the markers. The aim of the meeting is to reach a consensus as to the appropriate marks for the sample performances, to ensure consistency in the marking process. This will also enable the markers to set indicators for the determination of fail, pass, merit, distinction grades to be applied for each assessment criteria during the marking process. The Lead Assessor shall have the authority to make final decisions in the event that a consensus between markers is not possible.
- 2.14 It is the responsibility of the lead assessor to ensure that minutes of the meeting are produced and distributed to all markers. After the meeting the Lead Assessor will provide any additional guidance for markers that they deem necessary. Any additional guidance should be in writing and available for inspection by the Head of Assessments and EE.

Moderation

- 2.15 The Lead Assessor will double mark one candidate's performance or script for each marker. The Lead Assessor will then discuss the marks with the marker to ensure a consistency of

approach between all markers. This should take place as soon as practicable during the marking process.

- 2.16 Once the Lead Assessor has double marked a candidate with each marker, they will provide any additional guidance for markers that they deem necessary. Any additional guidance should be in writing and available for inspection by the Head of Assessments and EE.

First marking

- 2.17 All scripts/performances will be anonymised wherever possible.
- 2.18 For every candidate the first marker will complete a written marksheet which contains the marks awarded for each assessment criteria and sufficient written comments to explain how the marker arrived at the awarded marks.

Blind Second Marking

- 2.19 To ensure that decisions taken by markers are transparent and robust, the ICCA will adopt blind double marking for all modules on Part Two, except where computer-based testing is being used for Professional Ethics.
- 2.20 Blind double marking means that the second markers will mark each script assigned to them without reference to the mark sheets or marks awarded by the first marker.
- 2.21 The following table sets out which scripts which must be blind-double-marked following first marking:

Fail	All fails, (59% and below)
Pass	60%
Merit	68%. 69%, 70%
Distinction	78%, 79%, 80%

- 2.22 In any assessment it shall be open to the Lead Assessor to require additional blind second marking to be carried out in relation to scripts which have been awarded different marks to those set out in paragraph 2.13 or in relation to samples of scripts marked by particular markers.
- 2.23 Upon the completion of first marking the Lead Assessor will assign second marking to markers and notify the Head of Assessments of that allocation.
- 2.24 For every candidate assigned to them the second marker will complete a written marksheet which contains the marks awarded for each assessment criteria and sufficient written comments to explain how the marker arrived at the awarded marks.

Agreeing final marks

- 2.25 The first marker and second marker will then discuss their individual marks and attempt to reach a consensus on each assessment criterion and agree a final mark for the assessment.
- 2.26 Details of all discussions should be recorded in writing including the final agreed mark awarded in respect of each assessment criterion and the final agreed mark for the assessment overall.

Third marking

- 2.27 In the event that the first and second markers are unable to agree final marks, the Lead Assessor in consultation with the Head of Assessments will appoint a third marker to independently review the relevant assessments and the first marker's and second marker's marks and comments. The third marker will seek to resolve any disagreement. It shall be open to the third marker to blind third mark the assessment(s) in question. If necessary, it shall be for third marker to determine appropriate outcome for the assessments.

Moderation

- 2.28 In circumstances where the Head of Assessments identifies a systemic issue regarding the first marking process it shall be open to them to require all or a sample of the assessments concerned to be second marked so as to ensure that all marking outcomes are robust and transparent.

3. The fatal flaw rule

- 3.1 For each assessment there shall be a fatal flaw reviewer (FFR). Ordinarily, the FFR shall be the member of the ASP (or their delegate) who certified the assessment. It shall be open to the ASP to appoint a different FFR.
- 3.2 Pursuant to the BSB's Curriculum and Assessment Strategy, a fatal flaw could be, but is not limited to:
- 3.2.1 A significant or grave error of law or procedure
 - 3.2.2 An error in legal or case analysis that is so clearly incorrect that it would put the interests of the client(s) at risk
 - 3.2.3 An error in legal or case analysis that is so clearly incorrect that it puts the barrister at risk of liability for negligence or a disciplinary finding.
- 3.3 In any case where a 1st marker deems that a candidate has breached the fatal flaw rule, they should discuss the potential fatal flaw with the FFR at the earliest possible opportunity within the marking process.
- 3.4 In the event that the first marker and the FFR agree that a candidate has breached the fatal flaw rule this should be recorded on the candidate's marksheet together with a full written explanation of the parts of the assessment which give rise to the fatal flaw. The FFR shall inform the other markers of the fatal flaw issue.

- 3.5 In the event that the first marker and the FFR agree that a candidate has not breached the fatal flaw rule, the FFR will inform the other markers of the decision reached where it is appropriate to do so.
- 3.6 Paragraphs 3.3 and 3.4 are intended to ensure a consistent application of the fatal flaw rule between markers. Any decisions communicated to markers under paragraphs 3.3 and 3.4 shall be recorded in writing and sent to the Lead Assessor.
- 3.7 Once first marking has been completed the FFR shall review the performance of all candidates who have been deemed to have breached the fatal flaw rule and determine in every case whether the rule has been breached.
- 3.8 In the event that the FFR concludes that the fatal flaw rule has been breached they shall record that decision and the reasons for it in writing and provide these to the Head of Assessments.
- 3.9 Paragraphs 3.6 and 3.7 should be followed irrespective of whether a candidate's script is selected to be blind second marked.
- 3.10 In the event that a breach of the fatal flaw rule is identified during the blind second marking process the assessment shall be referred to the FFR who will review the assessment in accordance with paragraph 3.6.
- 3.11 All decisions made by the FFR under paragraph 3.6 shall be reviewable by the Head of Assessments. Where having reviewed a decision of the FFR the Head of Assessments comes to a different decision to the one made by the FFR, their decision and the reasons for it shall be recorded in writing.

4. External Moderation

- 4.1 At the conclusion of the internal marking process the External Examiner will be sent:
- The assessment
 - An anonymised spreadsheet setting out all first marks, second marks, third marks and the agreed marks
 - All scripts/ performances and mark sheets that (after internal marking is completed) remain within the grade boundaries as set out in the table above. The external examiner may ask to see further/ all scripts/performances.
 - All scripts/performances where a third marker was used.
 - Any assessment which has been found to have breached the fatal flaw rule.
- 4.2 External Examiners will not normally be expected to intervene in resolving individual cases in the event of markers disagreeing.
- 4.3 It is for External Examiners to determine that all marking has been carried out in accordance with the BSB's requirements and that ICCA assessment regulations and marking policies have been adhered to.

5. Recording of marks

- 5.1 At the end of the marking process the Lead Assessor shall be responsible for collating all final marks and mark sheets.
- 5.2 Final marks shall be communicated to the Registry Service Team for recording.

6. Examinations Board

- 6.1 The ICCA Examinations Board, on behalf of the Board of Governors, is responsible for ensuring that all examination processes have operated appropriately and fairly. The Board's responsibilities include conferring module marks and overall classification to be awarded.
- 6.2 In readiness for the meetings of the ICCA Examinations Board, all Board members will be notified of the date of the meeting as early as is practicable. Documentation will be provided in advance and should include any available reports from the ICCA team and the External Examiners and the proposed agenda. The Examinations Board agenda should include:
 - the obligations to preserve confidentiality and report any conflicts of interest consideration of minutes of the last meeting.
 - oral or written reports of external examiners on standard of the assessment processes and any issues identified.
 - consideration of invigilation irregularities or examination conduct issues, as appropriate.
 - consideration of extenuating circumstances, as appropriate.
 - consideration of the 'Red Light Rule' as appropriate.
 - consideration of any policy decision required around borderline marks.
 - review and conferment or revocation of module marks and overall classifications.
 - consideration of any Stage One Academic Appeal applications, and
 - the date of the next meeting
- 6.3 In respect of Board decisions and confirmation of results, the Examinations Board has no delegated discretion to amend the grades of students in the light of circumstances affecting performance. Marks may not be raised as a result of special circumstances or for any other reason. In these instances, the only discretion is for marks to be set aside and a re-sit without penalty awarded.
- 6.4 Prior to any Board Meeting the Head of Assessments shall convene a pre-board meeting at which all Lead Assessors should be present. If a Lead Assessor cannot be present they may nominate another member of the Academic Team to attend on their behalf. The purpose of the pre-board meeting is to verify that all information provided to the Examinations Board is accurate and to make recommendations to the Examinations Board, including the conferring of module marks and overall classification to be awarded in respect of each candidate.
- 6.5 If an individual candidate assessment is mislaid, marks cannot be awarded or interpolated, whether on the basis of the candidate academic profile or otherwise.

- 6.6 At the conclusion of the meeting, the Chair of the Examinations Board will sign off the results as finalised by the Board. The results may then be published as final results.
- 6.7 The minutes of the meeting will record all decisions and actions (including those relating to re-sits and deferrals), as well as the time and date of the meeting, and the names of those in attendance.
- 6.8 Where corrections are required to decisions of the Board, the Chair of the Examination Board (or their delegate) shall have authority to make such corrections by way of Chair's action. Any action taken pursuant to this provision, should be recorded in writing, added as an addendum to the minutes of the Board Meeting and circulated to all members of the Examinations Board prior to its next meeting.
- 6.9 The ICCA will provide the BSB with the list of final results.
- 6.10 Results will be communicated to students, normally within one week of the Examinations Board meeting.

7. Records

- 7.1 The ICCA will maintain accurate records to demonstrate how the marking process operated, including showing the rationale for decisions in relation to individual marks/grades, including any decisions that marks or grades should not be altered.
- 7.2 After the marking process and the review processes by the External Examiners and the ICCA Examinations Board have concluded, results will be entered by the Registry Services team into the student records system. No change shall be made to the results entered into the student records system without the prior approval of the Chair of the Examinations Board.
- 7.3 The ICCA shall securely maintain records of individual student results for a period of no less than 5 years from completion of the ICCA Bar Course or withdrawal from Part One or Part Two, such period being determined by the period of validity of the qualification as specified in the Bar Training Rules in the BSB Handbook in accordance with section 31.6 of the ICCA Academic Regulations.
- 7.4 In the event that a student's assessment script or video recording of a student's skills assessment performance is lost in transit between markers and moderators or at any stage of the assessment marking and moderation process, the ICCA Bar Course Leader will authorise access to the secure storage area held by the Registry Services team, in order to retrieve a duplicate script or video recording. The ICCA Bar Course Leader will then arrange for a second marking and moderation process to be undertaken in relation to that specific script or video recording.

8. Assessment Security

- 8.1 All assessment scripts will be scanned immediately after an assessment and held in secure digital storage by the Registry Service Team. All student recordings of assessments will be downloaded onto a secure server and retained digitally by Registry Services staff in isolated libraries on a cloud-based storage system. Scanned scripts and duplicate video recordings will be held for a period of 5 years.
- 8.2 If it is necessary for hard-copy scripts or physical recordings to be sent by post, they should be sent by recorded delivery or via courier.

9. Assessment Feedback

- 9.1 Following a summative assessment, students will be provided with feedback if they have further attempts outstanding. As with all feedback, the feedback will aim to help a student improve their performance at the next assessment attempt.