

**Test of Professional Competence
Second Pilot Examination**

Report on Second Pilot Feedback

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Introduction

At the end of the First Pilot Report, thirteen recommendations were made for the second pilot. Nine recommendations (2, 3, 4, 5, 6, 9, 10, 11 and 12) bore directly on the second pilot, and most were implemented. A document was written for the trainees explaining the purpose and nature of the assessment. The examination authors were given training in setting competence-based assessments. The practice complexity of the examination materials was increased. Instructions to trainees regarding the use of materials in the examination room were clarified, and the categories of texts were widened. Some, but not all, examinations assigned weightings to questions. There were no exemplars of work for trainees sitting the second pilot, and the areas of law under examination were increased rather than reduced. Recommendations 3 and 5 were not implemented: the areas of law under examination were increased, not reduced; and there were no exemplars of the standard of work for trainees to consult before the examination (impracticable, given that this was a first pilot in a number of new areas).

The areas of law under examination in the second pilot were as follows:

Area of law	Number of trainees sitting the examination
Company (Comp)	14
Conveyancing (Conv)	11
Civil Litigation (Civ)	10
Criminal (Crim)	1
Employment (Emp)	3
Family (Fam)	2
Private Client (PC)	4
Public Administration (PA)	4

Examiners were given training in competence-based examination setting, and were instructed to prepare materials for the examinations. The materials were distributed to trainees and the examination itself was held in the Law Society.

As in the first pilot, trainees were asked to fill out the questionnaire and invited to comment on the issues arising from the questions. They were then divided into their subject groupings, four discussion groups were formed and each group facilitator took notes upon the discussions that took place upon pre-set topics. Later, the questionnaire results and comments and the discussion group comments were collated, categorised and analysed.

Quantitative Feedback

For a full set of the collated statistical results, see Appendix 3.

On the following pages are set out the statistical results generated by the 20 questions that were set for trainees. The questions were identical to those in the first pilot. Where the numbers of trainees were relatively small in the first pilot, the number of trainees taking part in the second was more substantial – 48 in total, all of whom returned questionnaires. The results are commented upon below in their questionnaire order, 1-20.

1	It was easy to know the standard of work expected of me in this assessment
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Question 1 indicated a fair degree of concern amongst candidates regarding the lack of clarity about standards of work expected in the assessment. While 11 agreed with this statement (and 6 of these were from one subject area, **Comp**), the substantial majority disagreed, and 10 definitely disagreed. These results were borne out by comments attached to the question. It would appear that trainees require to be given more information on this. In the absence of such information, it is probably the case that they view the assessment as if it is an academic examination, for this is the model of assessment of which they have most experience. It is precisely because of this that more information regarding the aims of the assessment, its context, and possibly sample documents outlining the standards to be achieved by trainees ought to be generated.

2	I had not dealt in my traineeship with the topics being assessed
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We might have expected substantial disagreement with this statement. 20 disagreed or definitely disagreed. With the exception of 3 who were unsure, the rest agreed with reservations or definitely agreed – 25 in total. This result reinforces many of the comments that there is a significant gap between the topics under assessment in this pilot and the experiences of trainees in the office. It could be argued, of course, that the assessment ought to be orthogonal with the assessment criteria, rather than trainee experience, and this is undeniable. However, in the absence of a course that the TPC assesses, it is through their practical office experience that trainees come to prepare for the TPC, and therefore any misalignment between the two causes serious problems for the trainees.

3	This assessment will motivate trainees to do their best work
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Most trainees agreed, often commenting that it was generally in the nature of assessment to have this effect; but 20 disagreed.

4	The preparation was too heavy
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A number of trainees commented wryly that they would prefer to see the results of the assessment first before they answered this question. However a substantial majority disagreed, among them all the **PC** trainees, most **Conv** and most **Comp** trainees.

5	The assessment I was given tried to cover too many topics
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The range of responses here would seem to indicate that the topic range within each assessment seemed reasonably appropriate. Opinion was split within each subject on this issue, noticeably in **Conv**.

6	The assessment was too easy
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This question elicited one of the more homogeneous responses from the trainees. Only one agreed with this statement, the rest (bar 12 who were unsure) either disagreeing or definitely disagreeing.

7	To do well in this assessment all you really need is a good memory
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However we may define this assessment as a practical or an academic examination, it is clear that trainees do not regard it as a test of their memory only. The result is interesting because it is possible that, in a two-stage open-book assessment where trainees are given only limited access to texts, that they may perceive the second stage as being a test of memory of law. In their comments, a number of trainees observed that use of their firm's style banks was more important to performance than cramming legal principle and cases.

8	This assessment was a good test of our practical knowledge and skills
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19 trainees agreed with this statement, with a long tail of disagreement. Again, it is hard to discern a pattern in the subjects with the larger number of trainees. **Conv** and **Comp** were scattered throughout the range, indicating a mixed response to this statement, probably based on personal factors and experience within the traineeship.

9	The assessment I was given tested my understanding of the law in this area
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The responses to this question were one of the most positive in the questionnaire, with 5 definitely agreeing and 28 agreeing with the statement. The examinations appear to have tested understanding of the law in detail. However when the results are compared with those in question 8, they appear less positive. Question 8 concerned practical knowledge and skills and, as we have seen, the results were much more mixed. It would appear that the TPC has succeeded in testing understanding. But if it is to be a successful test not only of understanding but of professional competence (and by this is understood primarily the integration of knowledge and skills within workplace-based tasks), then the results for question 8 require to be better.

10	It would be possible to get through this assessment just by working hard the day before
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Once again, it is difficult to discern a pattern across the various examinations. **Comp** trainees, for example, fell into every one of the five categories. **PA**, as might be expected from their comments, disagreed. The majority of trainees, though, either agreed with this statement (18) or were unsure (14). If trainees think this about the assessment, it is clear that the assessments do not stimulate them to do much in the way of wide research. In a sense this is as it should be – the Law Society have advised that firms ought to give trainees a free day, though certainly not the day before the assessment. The number of trainees who were unsure whether they agreed with this statement, though, is significant.

11	There is too much assessment of knowledge in this exam
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A majority (23) disagreed with this statement – larger than the minority (14) that actively agreed with it. Nevertheless, there would appear to be a significant body of opinion regarding the balance of skills and knowledge that felt the assessment was weighted towards knowledge.

12	We were given enough time to understand the things we had to learn for the assessment
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Question 12 correlates with question 10, and the results are similar, with 36 definitely agreeing or agreeing with the statement.

13	The assessment I was given was a good test of my ability as a trainee solicitor in this area of law
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There was considerable disagreement as to whether the assessment tested the candidates' abilities as trainee solicitors. 24 agreed, 21 disagreed, while five were unsure, with 3 definitely agreeing with the statement and 8 definitely disagreeing. This is a key question and goes to the heart of whether or not the TPC can assessment competence. Clearly, opinion is divided amongst trainees on the issue.

14	The aims of this assessment were not clear to me
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Again, opinion was divided. 13 agreed, 10 were not sure, while the majority, 24, disagreed. Aims, therefore, seem to be reasonably well known to the trainees, unlike, for example, the standard of work expected in the assessment (question 1).

15	There was over-emphasis on skills at the expense of knowledge in my assessment
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Candidates responded strongly to this statement, with only two agreeing, 12 not sure, and 30 either disagreeing or definitely disagreeing. Clearly they felt that the knowledge component did not eclipse the skills elements of the assessment, and therefore the responses here correlate with those to question 8.

16	This assessment will put trainees under too much pressure
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Opinion was divided fairly evenly across each category, and there was no pattern of agreement or disagreement within subject areas.

17	The sheer volume of work to be done for this assessment means you can't comprehend it all thoroughly
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The volume of work does not seem to have caused the trainees problems. The majority disagreed with this statement (25), with only 8 agreeing and 12 unsure.

18	This assessment tested what I learned on my traineeship
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There were few unsure responses to this question, with a minority of 17 agreeing with the statement, and the majority (27) disagreeing that the assessment tested what was learned on their traineeship. **PA** and **Crim** fell into the 'definitely disagree' category, with the rest scattered across categories. This response is therefore not wholly based on specific examinations.

As pointed out before, the assessment criteria, not the traineeship experience, is the ground of this assessment. However, the fact that there is dissonance between the three elements of TPC assessment, traineeship experience and the assessment criteria is an indication of the need for a fairly fundamental review of the assessment structure. The results in this questions correlate with the results to question 13, where there was a similar spread of opinion, but overall narrow majority agreeing with the statement. Here, with the subject slightly different (learning, not ability), a majority disagreed.

19	I feel confident that I've done well in this assessment
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Confidence levels about success or failure is generally a sign of a successful assessment. Here, confidence levels among the trainees were not high at the end of the assessment. 17 agreed with the statement, 12 disagreed, but the majority (19) were uncertain. This reinforces the uncertainty as to standards that we saw in question 1. When one compares this with the actual results, of course, the 'unsure' category was right to be so uncertain.

20	I think an open book assessment is generally a good way of assessing whether a trainee should be allowed into the profession
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Surprisingly, in view of the generally divided response to assessment by open-book method, there was substantial agreement with this statement: 28 agreed, with 7 unsure and 13 disagreeing. It would seem that the opinion of the trainees is that open-book methods of assessment are appropriate; but that the form of open-book assessment methods used in this examination require to be re-considered.

What do these statistical results tell us? Considering the results as a whole, there are few clear-cut conclusions that can be drawn from them. It is clear from many of the questions, though, that a substantial number of the trainees are concerned about many of what might be termed the 'systemic' aspects of the assessment, namely those elements of the process that are fundamental to the nature and aims of the assessment. What emerges is a sense of uncertainty, and of anxiety about the assessment process. Anxiety is inherent in assessment, of course; but the factors causing uncertainty are those that require to be remedied before the real assessment can be sat by trainees. Such factors include:

- Development of mock examinations and answers
- Descriptors of standards to be applied in the marking of individual examinations
- Further dissemination of information regarding the aims of the assessment and the relationship of the TPC assessment criteria to the traineeship.
- Moderation of examinations across the eight areas of law to ensure a consistency in depth of knowledge required of candidates, and in the integration of knowledge and skills.
- Sub-division of areas of law to extend the types of examination available to candidates
- Further integration of assessment criteria with traineeship experience

Most of these (particularly the last) involve a fairly radical and 'systemic' review of the concept of the open-book assessment as it is currently implemented.

Qualitative Feedback

For a full set of the comments provided by trainees, see Appendix 2. Data from the four focus groups is set out in Appendix 3.

Trainees were asked to provide comment on the areas of the 20 questions in the questionnaire, and to reference these comments to the question number. The comments were both numerous and highly informative. The number of trainees in this second pilot were significantly more than in the first, and it has been possible to theme the set of qualitative data provided by the trainees. It should be noted that trainees were asked in the questionnaire to reference their comments to particular questions. The reference number for the question is set out in Appendix 2 in square brackets, and can be cross-referenced to the questionnaire which is set out in Appendix 4.

The comments were divided into six categories that are based on themes derived from trainees' own work according to a matrix formed across all the legal areas of the assessment, and each of the categories is discussed below.

Role of the firms

The role of the firms in the TPC – and also in the PCC – was the subject of comment by trainees. There is clearly a variability in trainee experience as regards preparation time. One trainee in the **Conv** discussion group had been told not to expect a day off as he was already getting two weeks 'off' to go on the PCC

One **Civ** trainee observed that

Realistically, busy firms are not prepared to give us preparation time – trainees will end up doing preparation in already limited own time.

This was borne out by some trainees' experience:

I had no time to take a day, or days, off work to fully prepare for the exam.

One **Comp** trainee went further:

Working in a high-pressured team 8am – 9/10pm Monday to Friday and at weekends as well as having to sit the TPC exam is too stressful/pressured

It could be said, of course, that firms were not giving trainees appropriate preparation time because they were sitting a pilot examination, and that in the real examination they would give trainees such time. However, this may not be the case. Fee-earners can be under pressure to use trainees at a time when the trainees ought to be given time out from office pressures, and the temptation to ask ever-willing trainees to study in their 'spare-time' can be strong. This is already evident from the experience of providers on the PCC. A **PA** trainee noted:

I spent a couple of hours a day (at least) for four weeks preparing. While I am fortunate enough to have an employer prepared to let me spend the time on it, others may not be as lucky. It is unfair to expect trainees to work a full day and then study into the evening.

The role of firms in the case of trainee failure in the TPC (either in the first instance or terminal failure was not made clear) was the subject of comment:

If you are doing well with your firm, getting good reviews in all depts, the firm then offers you a job in February, you come along to sit the test, have

a bad day and fail. What would be the outcome? The firm may wish to retract even though you've been a competent trainee. The answer to this, of course, is that the result of the TPC and the opinion of the firm as to the competence of the trainee should ideally be identical. Whether or not it might be, though, we will see when we consider comments on exam focus and other themes.

It is clear that firms are not yet fully informed about the nature of the TPC and the role they play as training partners in the professional process. There is a need for a document such as the Foundation document, which emphasises the role of partnership in the entire training programme, to be issued to firms, and for information and training sessions to be held for trainee supervisors, etc.

Preparation

From the comments in the focus groups on this, three things are clear:

- Firms vary widely in the extent to which they allowed trainees preparation time and resources
- The amount of time spent on preparation by trainees varied considerably across subject areas
- The amount of preparation time that trainees felt they needed is in direct proportion to the familiarity of the subject matter to trainees in the stage one papers

Some trainees (eg **Conv** discussion group) reported working 'often late at night'. The procedure for 'days off' could actually lead to an environment that did less to support the trainees. The **Conv** discussion group:

Another trainee had arranged a day off and had gone to the office to make use of the firm's resources. His presence had led to an assumption that he was there to work and he had subsequently had to go home, which meant that he did not have access to books.

Two **Conv** trainees commented on the questionnaire that their preparation time had been about right for the level of complexity in the examination itself. Others reported the preparation period as being adequate, but time spent on preparation varied considerably. One **PC** trainee reported simply reading the papers over once beforehand, with no preparation done apart from this. On the other hand, both Scottish Executive trainees '

spent about 3 hours per day in the period between receiving the papers and sitting the exam. They thought that there was a considerable disparity in the amount of preparation they had to do, and the preparation undertaken by other trainees. SE trainees had to research almost *ab initio* ECHR, Mental Health, and Judicial Review, -- very big topics, and far too much work in comparison to other subjects

The Crown Office **Crim** trainee reported that the issues were so different to her workplace traineeship that she did not know what to prepare, and therefore spent little time on it.

In the case of the Scottish Executive trainees, much more time than the recommended preparation period was required because of the unfamiliarity of the substantive law in the case study, and this contrasted with the relative familiarity of the scenarios in Employment and Family. The lack of past papers (often taken by students as a guide to examination topics and required depth of knowledge) clearly disconcerted some. As one **Comp** trainee observed:

Not sure about [what preparation was required] (came to this pilot in order to find this out). It wasn't clear otherwise eg from the stage one

materials. A difficult issue. In other circumstances, I could look at past papers but there are none.

Validation of examination materials

A number of trainees commented on the need for further work to be done in testing and validating the examination questions. One **Civ** trainee was of the opinion that

The exam questions were very unclear. The scenario was too vague to be able to write a good letter to either the client or the insurer

while another commented that

the fourth question was ambiguous and unclear

A **Comp** trainee pointed out that

Phraseology of the questions was too vague. Unclear what was expected from first two questions.

Examination administration

By this is meant the general procedures under which the examination was held. A number of issues were commented on. The lack of past papers was problematic for trainees, many of whom have spent their academic careers question-spotting in academic examinations:

As there were no past papers I had no idea how wide the subject was, what kind of things would be asked and how easy/difficult it would be.

Because of the two-stage nature of the examination, though, it was essential that trainees *did* question-spot, as one **Comp** trainee pointed out:

Although I was new to this topic, I found it easy to do little work but still be able to 'question-spot'. The ability to question-spot is a necessity, though, as it means you will come prepared with the right proformas, etc.

They were also unsure of the standards of marking that would be applied:

It would be helpful to know how the test is marked. Our tasks were split up [in the examination paper] but we were not given any indication of the marks attributed to them.

A **Comp** trainee put this in context:

No indication of format of exam before sitting. No indication in exam of marks awarded for each question. Not clear whether each question worth the same amount of marks. Hope *not* as Board Minute plus letter much more difficult and time consuming than other parts.

Depth of knowledge and referencing was problematic. Normally in academic examinations there are conventions that govern the citation of cases and statutes. These are put in doubt by the double nature of the open-book examination (encompassing both skills and knowledge). A **Conv** trainee put it well:

Because it is still new I did not know how much depth was required of the answers. Did you want all the case law and subsections of the Solicitors' Acts together with examples from Disciplinary Tribunals or did you just want me to be able to spot that a potential problem had occurred and that I required to take advice either from another solicitor in the firm or from Bruce Ritchie.

Instructions for some of the materials required further elaboration. One **Comp** trainee commented

The Society need to confirm instructions [...] more clearly re whether you can prepare eg typewritten board minutes/resolutions in precedent style and simply amend these in the exam for submission – I wasn't convinced this would be allowed and so tried to write out everything in full from scratch in the exam – Consequently I ran out of time there was a lot to write for this paper. If submission of amended pro-formas is not to be allowed then my opinion is that there was definitely not enough time in the three hours to complete the paper.

This comment is an acute one, and shows how what seem apparently small details of working method can determine to a significant extent a candidate's performance in examination, regardless of other factors such as preparation, prior knowledge, etc. This applies not just to advice that would clear up uncertainty about methods of working, but also the types of texts that would be useful at stage two of the examination, such as whether or not books of styles might be required.

Other minor issues include:

- Instructions to invigilators regarding examination room procedures (common enough in HE)
- In the **Emp** materials the precognition was inadequate, and therefore there was considerable information that trainees needed to know about this fact scenario that they didn't have. Another trainee noted that it was important to be given notice of the essential clauses.
- Two **PA** trainees worried about which texts they would need in the examination, particularly because they had little knowledge of the Mental Health Act. Should they, they wondered, take the text into the examination, or just copies of sections. They noted that the PA paper was delivered late, and wondered if this were grounds for appeal.
- The **PC** trainees were not sure what the area of 'Private Client' covered, even when they had access to the papers. -- what sorts of questions would be asked, they wondered? It was noted that executry work was not done by everyone doing a Private Client seat.

Focus of the Examination

This was a difficult theme to categorise, but the issues associated with it arose in every subject area. It includes the topic of exam difficulty raised in the discussion groups, but goes beyond this to other topics that impinge upon level of difficulty.

In a two-stage open-book examination process it is inevitable that the first stage will lead candidates to expect that some issues will be present at the second stage. Of itself, this is a useful process because it forces trainees to think closely about the types of issues, their relationships to each other, the elaboration of them at a later stage in the matter, and their resolution. It stimulates problem-solving thinking and analysis. However problems can arise with the two-stage model of assessment:

- Lack of continuity in either the issues or the depth of detail between the two stages
- Lack of knowledge on the part of the trainee to deal with the issues because the issues were not dealt with in traineeship
- Issues too complex or arcane at either stage

We can see this happening across the examinations. Sometimes the focus of the examination was affected by the work undertaken (or not) by the firm. A **Comp** trainee noted

I have spent six months in corporate department and that is why I chose this exam. However, my work to date is of so little relevance to this particular question I may as well have sat a criminal/public admin case study. As in all cases I would have been starting from scratch.

In **Civ**, a trainee commented that

I am training in civil litigation (mainly commercial litigation and defender reparation) – this test did not reflect what I do in practice [...] [and] it's not possible without narrowing it down further.

The same trainee later commented

This paper dealt with legal aid issues which my firm does not do – why should I have to sit a test on something I don't do? It's not fair if I were to be refused entry to the profession because I couldn't write about something I haven't done. It should test what was done in the traineeship – fundamental problems here.

It could be argued that the TPC is not a test of substantive law but of competence in the integration of skills and knowledge. But it is undeniable that at this level of detailed reference to practice, trainee performance is affected by knowledge of the field.

This was a point raised in every subject field, demonstrating that it is indeed a fundamental problem. A **PC** trainee noted

I mostly did Will and Trusts work in Private Client but the exam was really completely executry-based and I'm less familiar with this area.

A **Fam** trainee:

If it had been clear from stage one that the issue was to be occupancy rights only then it would have been OK

An **Emp** trainee:

I wasn't sure exactly what I was being examined in. Whether it was professional ethics, knowledge of law or style of letter. Quite often as a trainee, your attention to detail is what's most closely scrutinised.

and the same trainee noted shrewdly that performance in traineeship is often a function of the culture and size of the firm in which a trainee is based:

Very difficult to decide on the level to be expected due to the differing range of size of firms. What would be expected from a trainee in a two-partner firm is entirely different to that in a 40-partner firm.

The highly specialised focus of trainee training often skews expectations about stage two of the examination, or disconcerts trainees at stage one. A **Civ** trainee commented

Quite a lot on legal aid provisions – my firm does not do this type of work. Similarly, we do not deal with Pursuer reparation – therefore not testing the work I have done.

And another:

The TPC did not allow me to show what I have learned. I have done civil litigation for many months but always from the Defender side and to make it purely Pursuer oriented is not fair. I have no experience of legal aid and to expect me to be level with someone who does legal aid regularly and knows the issues is not realistic.

There is a sense here that the trainee expects to do badly in a normative ranking of results. There is of course no such ranking in the TPC, where performance ought to be measured against standards derived from outcomes and assessment criteria. Nevertheless, the point about fairness within the examination still

stands: it is a harder examination for the candidate who has to come up to speed on the area of law than it is for one whose knowledge of the law is deeper.

This was particularly true of the situation of the **Crim** trainee, a Crown Office employee sitting what was effectively a defence agent examination:

The Criminal exam is set with a defence practitioner in mind. Topics being assessed were such things as how to write a letter to a client and to have a discussion with a client re: his position. I along with 15 other trainees this year, work for the prosecution, therefore, I have not dealt with these topics in my traineeship – and never will!

As a result, the focus of the assessment could, and did, become unclear. This point was raised by the **PA**, **Fam** and **Emp** trainees to an extent, and by the Criminal particularly:

The assessment did not assess me at all as a trainee in the area of prosecuting crime. If I am deemed 'incompetent', it will be as incompetent in a job I do not do. I was not assessed on the work I have carried out throughout my traineeship.

The same trainee noted that the exam forced her to 'become academic again', a point raised by at least two **Convey** trainees:

[the] TPC concentrated too much on theoretical aspects as opposed to inherent practical aspects of domestic conveyancing.

The assessment tested the law of conveyancing that I had learned in the degree programme and virtually none of the practicalities I had learnt on Diploma and within traineeship

Stage one of the assessment did not put me under pressure. Stage two did because I was expecting a practical test of my skills and knowledge rather than merely a test of my knowledge.

[...] largely theoretical – a truly practical test is impossible under exam conditions. More consideration required as to whether trainees can use their own firm's methods to complete the assessment – eg amending precedents/styles instead of copying out blindly by hand which serves no purpose.

These comments reveal the difficulty in setting practical assessments that test practical skills outside of the workplace. So much of local skills and competence in an area of practice is based upon the method of working, the availability of local knowledge networks within an office, and local resources, that it is almost impossible to recreate this within a relatively context-less examination room.

Success of the open-book assessment

Often examination candidates have much to tell us about the success or otherwise of an assessment. Their observations are based on the experience of actually sitting the assessment, as opposed to the examiners or markers, and this is invaluable feedback. It is also feedback from a particular point of view, and we must bear that in mind when considering it. Trainees are a part of this assessment process as much as anyone else involved, and have points of view, prejudices and points they want to convey. Nevertheless, since the success or otherwise of the second pilot was commented on in almost everything they said, we need to consider this category as perhaps the most important of the six in this report.

The most positive trainees were those who sat the Employment and Family assessments. **Fam** trainees commented that the materials were as they might have expected them to be at both stages of the assessment, and that they were pitched at the right level of complexity for trainees. Comments from the **Fam** discussion group included the following:

- Well drafted papers. Esp re several different craves and remedies. Context was familiar. Easy to identify what to do for the client. Overall context of a client was familiar.
- Trainee who had just moved into family had to do extensive research, though, because unfamiliar with the area of law. Type of action was uncommon, but well signalled.

Emp trainees were of broadly the same opinion:

- About three hours preparation in total was carried out by each trainee.
- Area of law covered was relevant, good materials.
- It appeared easier to predict what would be in this examination than others, particularly re remedies, Tribunal, etc.
- Research notes were produced, esp re redundancy, and style banks were useful in office. Quite straightforward case & area.
- The size of the firm matters a lot re the support that trainees get, and this would be replicated across areas of law, and across different TPCs, they felt

Trainees from other areas did not feel as sanguine about the success of the pilot.

A **PA** trainee made two separate comments on this:

I do not feel [the assessment] tested anything I hadn't already demonstrated a degree/diploma level. It did not give me an opportunity to demonstrate the skills I developed as a trainee.

I do not think that an open book assessment can test the ability of a trainee. It is endeavouring to measure practical skills by way of academic testing.

Another **PA** trainee commented in more detail:

I fail to see how this assessment adequately or appropriately adds anything new to the assessment of my overall competency as a solicitor. Working as a solicitor is not the same as taking an exam. An exam scenario does not accurately measure someone's overall ability.

A **PC** trainee pointed out that the exam seemed overly academic:

Contrary to what I'd been led to expect, the exam seemed to be testing legal knowledge in detail.

The **Crim** trainee agreed with this:

This assessment will mean that, instead of focusing on learning the job they are being paid to do, trainees will have to become academic again. How well someone has performed in his or her traineeship cannot be assessed in 3 hours, on paper.

Another **PC** trainee agreed:

I think there are far better ways to do this. The exam does not at all reflect real life. In real life, if I got something to do that I was unsure about I would speak to colleagues about it. Also, people who had experience of doing the things in the exam, eg setting up a will would have an advantage over those who didn't have that exam. This makes the exam unfair. Also, I would normally draft things on a computer and change them quite a lot before finalising them – it was not possible to do this in an exam. I was unable to produce the type of work I normally would.

These trainees are pointing out that the situated nature of legal practice provides the essential context for assessment. It may be argued that the assessment is really setting out to test the assessment criteria, rather than the experience of traineeship primarily, and that therefore the trainees' comments are not strictly in point. However, the way in which trainees gain experience of the practical matters they are being assessed on is through their traineeship, and they are right when they comment on the misalignment of experiences and assessment.

One **Comp** trainee's experience is worth quoting at length on this

None of the seven heads which the test could be undertaken [*ie* the eight areas of law in the TPC] were relevant (even remotely!) to my traineeship. As a consequence I had to start at a very basic starting point to ascertain what financial assistance actually was. I had to do textbook research mostly and did not feel anyone in my workplace could assist ...only relevance was the Bank's involvement, which was clearly not being tested. I think if a trainee was in private practice, I think it would be much easier and there I feel this TC is unfair and irrelevant for me.

I was saved (I think) by a friend who works for a big firm and handed me her training notes on how to fill in forms etc. This kind of information is certainly not available in textbooks. I appreciate this is a test of practicalities of what is done in a traineeship but there is no way for me to glean such experiences. I think fairness of relevant issues require urgent addressing. [...] Also, found it very tempting to rattle off everything I knew about the topic in letter to client as a way of point gathering as per university issues. I do not think a letter to a client which I would do in practice would resemble the one I wrote in the exam. Also impossible without 'copy and paste' facilities of my PC!

What we see here is the situation of the trainee for whom none of the areas fit. It is a situation that many trainees appear to have been in to a lesser extent, as we have seen in the previous section. The trainee resolved it by doing what many lawyers do in practice when they have to learn a new area of law: they rely on a combination of textbooks, networks of colleagues and practitioner notes and aids – on the 'situated learning' of the workplace. However, the examination isolates trainees from the workplace, and as a result their sense of the audience for the texts they produce becomes uncertain – is it the client they are supposed to write to, or the examiner, who will want to test them on knowledge and skills? This uncertainty is increased because the common modes of production in which they practise their skills – here, template letters on a PC – are no longer available. As a result, they fall back on the academic approach to law, which has served them well in the past. The open-book assessment, designed to test practical skills, has become yet another academic assessment.

This was the opinion, generally, of the great majority of the trainees. There were dissenting opinions. The **Emp** trainee reported in the discussion group that in his preparation

research notes were produced, esp re redundancy, and style banks were useful in office. Quite straightforward case & area.

While the **Fam** trainee commented:

- Well drafted papers. Esp re several different craves and remedies. Context was familiar. Easy to identify what to do for the client. Overall context of a client was familiar. [...]
- Type of action was uncommon, but well signalled.

The majority, though, commented on how the examination had become academic, and the statement of several in the general discussion group can stand for almost all in this respect:

This will always need to be an academic style of exam. Being in a room for 3 hours, sending out a letter without the partner looking at it, and also having four weeks to look at the issues. This is just not practical work or

practical assessment, but if we're not to be assessed at work, then this is the only way to do it.

The **Conv** trainees agreed in their comments on the final questionnaire question: It [the examination] tested what I was taught and have already been examined on at degree and diploma level.

[...] it is totally artificial. A good trainee must be willing to work hard, ask questions where necessary, communicate effectively, prioritise work, etc. This tested none of these skills. An exam cannot test how good a trainee is – only your employer can judge that.

Better than a closed book [exam], but it is no judge of how you perform in the office

A **Comp** trainee agreed:

I don't think an assessment at the end of seven years is a good way to allow entry into the profession. I would think the people best suited to judge whether you are competent are those people you've worked with for the past two years.

What we have here is a re-enactment of the arguments and debates in competence-based education, as to whether assessment in professional competence education can ever be separated from the workplace where so much of professional method, attitudes and skills are learned. Whether in theory it can be is the subject of conflicting research findings. Whether in the case of the TPC it ought to be so separated is, from the evidence of the experience of the stage two pilot trainees, a much clearer issue.

Conclusions

In most of the sections above, there are problems with the open-book assessment process of the TPC. Minor problems with examination administration on the day can be rectified fairly easily; and further validation of materials and questions can be put in place in a rolling programme of assessment resources development. More intractable is the role of firms in the assessment process: it is probably the case that much remains to be done to involve them in the assessment process.

More serious are the problems associated with examination validity and relevance. The Conclusions to the first stage pilot report stated that there was a need to align the three elements of the assessment process, namely the assessment criteria underlying the assessment, the work experience of trainees who are sitting the assessment, and the format of the examination. The overwhelming evidence from the trainees in this stage two pilot suggests that this is still the case, and that the problems identified in the open-book regime in the first report still remain. This is in spite of the considerable efforts put into the training of examiners, by examiners themselves, and by the Law Society in its dissemination of information about the nature and purpose of the open-book assessment. The examination and preparation of all concerned was carried out with thoroughness and efficiency; but the underlying problems inherent in the open-book assessment at this stage in the professional programme have not been resolved. Moreover, it is doubtful whether, in the timetable that the TPC open-book assessment requires to be held, the tasks that require to be completed can be finished to deadline, given the constraints on Law Society resources.

Given these problems, it would probably be the case that it would be unsafe to continue with the TPC open-book assessment in its current form.

Recommendations

Given the timetable of the professional programme now underway, the TPC Committee requires to come to a decision about the future of the open-book assessment. There are four options open to the Committee:

Option 1

Continue with the development of the open-book assessment in its current form. The timetable for this already exists, and the recommendations for improvement within this timetable would include the following points:

1. Reinforcement of TPC preparation time within firms
2. Further information to firms regarding the role and nature of the TPC
3. Reduction of variability of preparation required among groups of trainees
4. Rolling programme of validation for examination materials
5. More instructions to trainees as to what they should bring to the stage two assessment
6. Examination questions to be assigned marks
7. Examination conventions regarding citation to be set out for examinees
8. Guidelines regarding the forms of document submission allowed in the TPC, eg the extent to which trainees can bring typescript into examinations and amend this.
9. Review of examination room procedures and guidelines to invigilators

Option 2

Postpone the introduction of the open-book assessment of the TPC for at least one year, preferably two, during which there is a thorough re-appraisal of the concept and the implementation of the assessment. Areas for re-appraisal to include the above nine points, and the more substantial points on p.8 above, namely:

1. Development of mock examinations and answers
2. Standards descriptors to be applied in the marking of individual examinations
3. Further dissemination of information regarding the aims of the assessment and the relationship of the TPC assessment criteria to the traineeship.
4. Moderation of examination papers and results across the eight areas of law to ensure a consistency in depth of knowledge required of candidates, and in the integration of knowledge and skills.
5. Sub-division of areas of law to extend the types of examination available to candidates
6. Further integration of assessment criteria with traineeship experience

Option 3

Abandon the concept of an open-book assessment within the TPC and leave the assessment of skills to firms in the form of the traineeship log book and signing-off statement

Option 4

Transform the open-book test into a project-based assessment supervised by the Law Society as well as the training firm. This will require re-alignment of elements of the professional programme, and will therefore require a postponement of two years, applying for the first time to those students presently just entering the Diploma.

Appendix 1

Qualitative Feedback

On the following pages are set out the comments made by trainees on the questionnaire after they sat the examination. Comments are arranged by the eight areas of law, and each new bullet point signifies a trainee.

CIVIL LITIGATION

COMMENTS

1. [Q4] Exceptionally difficult to know what to prepare and in the end what I studied did not help me much in the TPC, as what was being asked in the TPC was not what was obvious from the title given.
 2 Basis of examination concentrated on Legal Aid, which I would suggest, was unfair as this is a specialist area; so few firms now deal with Legal Aid.
 3 The fourth question was ambiguous and unclear.
 4 The preparation enabled me to concentrate on an area (reparation) which I will not have the opportunity to cover in my traineeship but I do not understand how it has tested my professional competence.
 5 The file note did not enable you to consider properly the areas required in the exam; it would have been more beneficial if you had firstly asked what steps were required after that initial meeting and then provided us with precognitions etc to be able to discuss more fully the strengths and weaknesses of the case.
 6 I have sat this exam as a new second year trainee and would expect that my substantive and professional conduct knowledge to be greater by the time I was sitting this for real.
2. [Q5] [Q9] [Q11] & [Q20] The initial paper covered many topics which I had prepared/researched. The 'file' brought in other topics, (understandably as that often happens) however it is impossible to be ready for everything for this style of exam. It was difficult to know what would be brought up in the exam. Of course you could bring any text but there is a limit (realistically) on the amount of materials you can bring.
 To answer an exam type question in such a wide area it is unfair to throw in topics the trainee may have no knowledge/materials on.
3. The questions asked in the exam were not those questions anticipated from the materials given. A lot of the information given was not tested or asked from the questions. Also the last question could have been worded more clearly.
4. [Q2] No legal aid work whatsoever – nor compensation etc.
 [Q4] Realistically, busy firms are not prepared to give us preparation time – trainees will end up doing preparation in already limited own time.
 [Q10] Only if you had covered the work during the traineeship.
 [Q12] I wasn't entirely sure from the single file note what I did have to learn.
5. [Q1] No – the materials supplied consisted of only one file note and it was not what type of questions would be asked i.e. would it be legal (draft a writ) or not (write letter/discuss ethical issues).
 [Q2] Quite a lot on legal aid provisions – my firm does not do this type of work. Similarly, we do not deal with Pursuer reparation – therefore not testing the work I have done.
 [Q13] No – I am training in civil litigation (mainly commercial litigation and defender reparation) – this test did not reflect what I do in practice.

[Q18] No – again, see above – this serves to highlight the problem with trying to fit one test to fit everyone doing civil litigation – it’s not possible without narrowing it down further.

[Q20] It would be if the paper reflected what I do in my traineeship – this paper dealt with legal aid issues which my firm does not do – why should I have to sit a test on something I don’t do? It’s not fair if I were to be refused entry to the profession because I couldn’t write about something I haven’t done. It should test what was done in the traineeship – fundamental problems here.

6. [Q2] My firm generally and me specifically do not do reparation. Ditto for Legal Aid. A choice of litigation topics would have been better and some drafting would have been better for me, beyond letter writing.

[Q13] See the above. If I had done reparation it would have been a fair test in this area of law.

7. The TPC did not allow me to show what I have learned. I have done civil litigation for many months but always from the Defender side and to make it purely Pursuer orientated is not fair. I have no experience of legal aid and to expect me to be level with someone who does legal aid regularly and knows the issues is not realistic. The issues that come out from the initial file note were not the one that ultimately appeared relevant in the questions – e.g. conflict of interest was obviously an issue from the file note but this was not at all relevant to the exam. Giving him a brain tumour after that was trying to make things more complicated for us and trip us up when there was no need for it – we would have been tested more fairly on the basis of the information in the file note. The type of tasks I was asked to do are not ones which I have to do in my traineeship – I report to the insurance companies and their needs are totally different from what was being tested. It was not easy to identify what were likely to be relevant factors and to prepare accordingly – all the preparation work I did was useless!! The way of assessing how able a trainee is to become a solicitor is not through a written exam.

8. [Q1] & [Q14] Past papers must be made available for all TPC subjects well in advance of the exam. We had no past papers before today’s pilot – this would be entirely unacceptable if this were for real. The exam paper was poorly set out, with materials in the wrong order. A more traditional exam cover sheet would help.

[Q2] The litigation exam is partly irrelevant to those in a commercial law firm who do not do legal aid work.

[Q1] We had no indication of the format of the exam or of what would be examined – past papers would help, even if they were mock past papers.

5 If we are deemed competent after today’s exam, can we please have exemptions?

9. The exam questions were very unclear. The scenario was too vague to be able to write a good letter to either the client or the insurer. As the firm I work for neither does personal injury claims or legal aid, I felt this disadvantaged me to the certain extent. The questions didn’t mention the issue of conflict which is very important nor did it give the opportunity to discuss what I felt were the most important issues i.e. scope of employment, who was giving instructions, the question of suing both the company and manufacturer, perhaps also the court procedure (initial writs etc.).

There was also too much emphasis on Legal Aid.
[I would note that I have been in the civil litigation of my department for only one month and this was probably reflected in the exam.]

PRIVATE CLIENT

COMMENTS

1. [Q1] It was impossible to know what to expect in the exam – could you issue sample papers beforehand to give candidates some idea as to what they'll be expected to do, as this is the first year? (On the website perhaps.)
[Q13] Contrary to what I'd been led to expect, the exam seemed to be testing legal knowledge in detail.
[Q18] I mostly did Will and Trusts work in private client but the exam was really completely executry-based and I'm less familiar with this area. I liked the practical approach of being asked to draft a memo, letter etc but I also felt I was spelling out the law in a fashion which would be unnecessary if I really was writing to a partner, as their assumed knowledge is considerable. How about if you were asked to summarise the position for a first year trainee instead?
2. [Q1] As there were no past papers I had no idea how wide the subject was, what kind of things would be asked and how easy/difficult it would be.
[Q2] I had dealt with some but not all (never had to set up a will but have done a lot on Legal Rights).
[Q5] Although it would have been nice to know the limits of what 'Private Client' could cover.
[Q12] Depends on what 'Private Client' could cover and what could have come up.
[Q20] I think there are far better ways to do this. The exam does not at all reflect real life. In real life, if I got something to do that I was unsure about I would speak to colleagues about it. Also, people who had experience of doing the things in the exam e.g. setting up a will would have an advantage over those who didn't have that experience. This makes the exam unfair. Also, I would normally draft things on a computer and change them quite a lot before finalising them – it was not possible to do this in an exam. I was unable to produce the type of work I normally would.
3. [Q16] I think a lot of trainees are concerned that the TPC may be the "be all and end all" for example, if you are doing well with your firm, getting good reviews in all depts, the firm then offers you a job in February, you come along to sit the test, have a bad day and fail. What would be the outcome? The firm may wish to retract even though you've been a competent trainee.
[Q2] & [Q18] I had dealt with a similar circumstance during my 6-month stint in this dept, but by no means was setting up the validity of a will a routine thing. As regard intestacy and legal rights, this I saw more often but by far and large, the work I did most often was drafting wills, trusts and powers of attorney and dealing with routine executries. The other candidates I spoke to had not set up a will, so this involved more research for them.
[Q19] It would be helpful to know how the test is marked. Our tasks were split up but we were not given any indication of the marks attributed to them.
4. [Q10] It wouldn't be possible to get through the assessment by just studying the day before, as some of the questions that came up could not be predicted.
[Q13] – I thought that drafting would be part of exam as that is

what trainees do for a large proportion of their time.

[Q16] – Although I think that this will depend on how busy the trainee is in their job and the willingness of their firm to allow study time.

[Q18] – Although I don't think the test was representative of the work that I did for the majority of my traineeship.

FAMILY LAW**COMMENTS**

1. [Q5] It wasn't clear enough from Stage 1 papers what topic would be assessed – it could have been a number of the points raised in the papers. This means I spent a fair bit of time researching things which weren't raised at Stage 2.
[Q9] Although my only understanding of the topic arose from my study for the TCP, I hadn't had any experience of occupancy rights from the traineeship.
[Q13] Although I had no previous experience of this area within the Family Law context.
[Q17] If it had been clear from Stage 1 that issue was to be occupancy rights only then it would have been OK.
[Q18] Perhaps as to skills but not to do with that type of work.
2. [Q2] Although I had never experienced the particular type of action considered in the assessment, the skills, procedures and general principles were familiar.
[Q3] By far the greatest motivations are the desire to learn and the desire to do well for/impress the trainee's employer.

EMPLOYMENT LAW

COMMENTS

1.
 - Exam was unrealistic.
 - Would normally type a letter and then amend it. I would probably also try to make it as succinct as possible. Would also look at similar letters to get an idea of style.
 - In relation to any drafting, would normally start with a precedent.
 - The actual situation that we were dealing with was too little too late. I would have given legal advice at an earlier stage to that client.
 - May have avoided redundancy or received a severance package, thus avoiding raising a claim.
 - I wasn't sure exactly what I was being examined on. Whether it was professional ethics, knowledge of law or style of letter. Quite often as a trainee, your attention to detail is what's most closely scrutinised.
 - Not sure of the working system.
 - Maybe would be a good notion to give the choice of whether you will be representing the employer or the employee and have two separate papers. Some firms only really act for employers and vice versa.
 - [Q1] Not sure whether knowledge of law more important than style of letter.
 - [Q2] I had dealt with it but from a defender's point of view.
 - [Q3] TPC is just pass/fail whereas unending work for partner must be 100% correct.
 - [Q4] One day is sufficient.
 - [Q6] Will depend on how it is marked.
 - [Q7] Little memory required.
 - [Q10] If have done a seat where covered this area, then YES, otherwise more preparation required.
 - [Q13] Hand-written exam made amending letter difficult. Would normally type such a letter.
 - [Q15] Depends on how it is assessed.
 - [Q16] It may be an unnecessary pressure.
 - [Q18] Yes and no. I had dealt with similar situations.
 - [Q20] It should be for supervising partner to determine via an end of seat review.

2.
 - [Q1] Very difficult to decide on the level to be expected due to the differing range of size of firms. What would be expected from a trainee in a 2-partner firm is entirely different to that in a 40-partner firm.
 - [Q7] It is more a test of how good the resources are within your firm!

CRIMINAL LAW**COMMENTS**

1. [Q2] The Criminal exam is set with a defence practitioner in mind. Topics being assessed were such things as how to write a letter to a client and to have a discussion with a client re: his position. I along with 15 other trainees this year, work for the prosecution, therefore, I have not dealt with these topics in my traineeship – and never will!
[Q3] Why should Crown Office trainees waste time learning about defence work and practice when they will never need it? For my 15 colleagues and myself the only way we will pass the exam is to be clued up on how defence agents conduct their business. I am pretty certain that we will refuse to learn a job that is not ours just to pass an exam that is supposed to assess our traineeship.
[Q4] The amount of preparation, and what preparation that should be, is unclear as you do not have the questions.
[Q12] It was never clear to me what I had to learn from the assessment. The questions could have been based on anything, going by the materials that were provided. The scope was too large.
[Q13] The assessment did not assess me at all as a trainee in the area of prosecuting crime. If I am deemed "incompetent", it will be as incompetent in a job I do not do. I was not assessed on the work I have carried out throughout my traineeship.
[Q16] This assessment will mean that, instead of focusing on learning the job they are being paid to do, trainees will have to become academic again. How well someone has performed in his or her traineeship cannot be assessed in 3 hours, on paper.

CONVEYANCING

COMMENTS

1. I was not sure in how much depth to study the scenario prior to sitting the assessment.
Because it is still new I did not know how much depth was required of the answers. Did you want all the case law and sub sections of the Solicitors' Acts together with examples from Disciplinary Tribunals or did you just want me to be able to spot that a potential problem had occurred and that I required to take advice either from another solicitor in the firm or from Bruce Ritchie or Les
It was not clear how much ethics knowledge would be needed as opposed to straight drafting. If drafting I would bring more styles with me next time!
2. [Q8] The assessment questions at Stage 2 did not cover any of the practical aspects of
Conveyancing e.g. arranging for Land Register Reports, drafting Dispositions, obtaining Discharges, redemption statements, preparing security etc. Instead it was my opinion that TPC concentrated too much on theoretical aspects as opposed to inherent practical aspects of domestic conveyancing. The Stage 2 questions 1 and 3 in particular were in my view the same question although that was perhaps a reflection on my understanding rather than the intention of the assessors.
[Q9] The assessment tested the law of conveyancing that I had learned in the degree programme and virtually none of the practicalities I had learnt on Diploma and within traineeship.
[Q16] Stage 1 of the Assessment did not put me under pressure. Stage 2 did because I was expecting a practical test of my skills and knowledge rather than merely a test of my knowledge.
[Q20] In practice, if I was unsure of an area of law, or needed a style for a disposition etc, then I would be permitted to do a search on this or to manipulate a style when required and it would make sense for the assessment to require you to do this under pressure.

As a general note, the problem needs to be consistent as at start of problem the sellers were married and hoping to purchase a new home together, while we were informed in last paragraph that they had separated.
3. [Q2] As a trainee in a Commercial based firm, a conveyancing exam based on residential situations is not wholly applicable.
[Q6] Depends on whether I've passed or not! Generally though I think it was pitched at the right level.
[Q8] Agree to an extent but it is still largely theoretical – a truly practical test is impossible under exam conditions. More consideration requires as to whether trainees can use their own firm's methods to complete the assessment – e.g. amending precedents/styles instead of copying out blindly by hand which serves no purpose.
[Q9] Yes but qualified as in (1) above.
[Q10] Yes depending on what appears in the unseen section>
[Q12] A month is plenty.

[Q13] Yes but you are being tested on things that would be your boss's decision in practice e.g. whether to act or not.

[Q18] See (1) above.

[Q19] Yes but marking structure unclear.

[Q20] Yes because that's how it would be in practice

4. [Q20] If it is felt necessary to examine with a written paper then an open book exam

reflects the working environment more closely.

[Q16] This will depend on their working environment, if it is supportive then it should be possible but if not and allowance is not made for doing the exam and time to prepare then it could be quite stressful.

5. I felt that the paper given out 4 weeks prior was a good indication of the topics to be looked at. More preparation on my part would have resulted in a better performance. I did, however, fee being a trainee doing more than just the area on which I have been tested I did not have knowledge or experience on all the areas in the test. Having a general traineeship doing family, civil litigation, private client, it is difficult to pick a subject and have experience in all areas.

6. [Q1] There was a great deal of information which threw up many possibilities – difficult to decide type of questions to expect e.g. comment solely on ethics of problem, draft documents (there were many possibilities here) – what balance might I expect between all these things? Will it be entirely practical skills or a risk management exercise?

[Q2] Not always covered every aspect of work but most had been covered at some point during traineeship. Some was new to me in terms of my personal experience as yet.

[Q5] However, the potential to become confused in what was expected of me as quite a lot of information all the same. See (1).

[Q14] I'm not sure that any trainee is entirely sure of the real aim of TPC. Is it really necessary?

[Q10] I disagree but it is possible. However, it was better to have the 4/52 to do a bit of research and talk to others. It is better to give yourself a good lot of time (4/52 is fine) just to think about the issues.

The TPC seemed to be pitched at the right level although a little more indication of what is going to be required of you on the day would be helpful.

7. [Q1] Before the documents were sent out it was very difficult to appreciate just how much work would be involved. Got a better indication on receipt of paperwork.
[Q2] Most of the subject matter had been covered – the few issues which had not required research.
[Q4] Once the issues had been identified the preparation work very limited.
[Q7] Not at all – the open book format meant that if you had good reference notes you could rely on them heavily.
[Q9] Very much so – tested my understanding of professional ethics.
[Q11] I felt it was fairly well balanced between conveyancing matters and issues of professional ethics
[Q13] Obviously the text cannot test one's entire knowledge acquired but it was a good start.

- [Q14] Bit unsure.
- [Q16] Preparation time is not excessive.
- [Q19] Look forward to hearing how well I did.

- 8. [Q1] Being a pilot, it is by definition unknown!
[Q2] It was more residential conveyancing than commercial.
[Q4] Trying to find time to prepare whilst working full time long hours is impossible.
[Q8] Not at all, in an office you have all the research resources at your fingertips and all the styles you would need. You may not have these in the exam. It is luck if you guess right!
[Q9] It tested what I was taught and have already been examined on at degree and diploma level.
[Q13] Not at all – it is totally artificial. A good trainee must be willing to work hard, ask questions where necessary, communicate effectively, prioritise work etc. This tested none of these skills. An exam cannot test how good a trainee is – only your employer can judge that.
[Q16] It forces a trainee to put in extra study beyond the unpaid overtime we do in the office.
[Q18] Not at all – see (2) and (6)
[Q20] Better than closed book, but it is no judge of how you perform in the office.
- 9. [Q1] Publish some mock past papers.
[Q2] My firm only do commercial conveyancing.
[Q4] I have had a very busy last 2 weeks of work – had to find time to do all the research required.

COMPANY AND COMMERCIAL

COMMENTS

1. [Q2] Had covered financial assistance in a seminar but not in practice.
 [Q5] Thought there were going to be more ranking issues in the exam because issued with Floating Charge and Guarantee.
 [Q6] Impossible to comment informatively without knowing results of exam. Seemed okay, too much required to be done in this – especially letter plus Board Minute.
 [Q12] But 4 weeks not a long time if involved in completion during that period or away on holiday – still no indication of dates for TPC has been given.
 [Q13] Too much required in 3 hours especially Board Minute plus letter very long procedures.
 [Q1] No indication of format of exam before sitting. No indication in exam of marks awarded for each question. Not clear whether each question worth same amount of marks. Hope not as Board Minute plus letter much more difficult and time consuming than other parts.
2. [Q2] I have spent six months in corporate department and that is why I chose this exam. However, my work to date is of so little relevance to this particular question I may as well have sat a criminal/public admin case study. As in all cases I would have been starting from scratch.
3. [Q16] Working in a high pressured team 8 a.m. – 9/10 p.m. Monday to Friday and at weekends as well as having to sit the TPC exam is too stressful/pressured.
 [Q17] A lot of areas of law were raised by the problem which needed to be looked into but couldn't be looked into in detail.
 [Q18] It tested my ability to learn the law again like we had to all the way through University and the Diploma. It tested my ability to read and apply Statute and research issues. Similarity to work:- ability to use available resources was tested.
 [Q19] I would propose if those who sat it passed clearly then they should be exempt from sitting a like test to remove stress and ensure employer doesn't lose any more of my time.
 [Q20] This reflects the working environment.
 [Q6] A week and a half of preparing 1 hour after work, 2 hours over lunch, one day with a corporate colleague and a study day was the preparation I undertook. I thought this was sufficient.
 [Q5] A lot of areas could be looked into in preparation but not all was assessed.
 [Q8] It required a lot of writing and I ran out of time – due to my detailed approach.
4. I was unclear what we would be required to do on the day. We were given specific tasks to do in the Stage 1 materials and (having done these in preparation prior to the day of the test) much of the test itself was a copying exercise.

5. [Q6] & [Q19] The Society need to confirm instructions (I don't mean the materials but the instructions) more clearly re whether you can prepare e.g. typewritten board minutes/resolutions in precedent style and simply amend these in the exam for submission – I wasn't convinced this would be allowed and so tried to write out everything in full from scratch in the exam – Consequently I ran out of time as there was a lot to write for this paper. If submission of amended pro-formas is not to be allowed then my opinion is that there was definitely not enough time in the 3 hours to complete this paper.
This aside, I think the test paper was pitched at about the right level.
6. [Q2] & [Q13] [Q18] Company/Commercial is such a wide topic that I would think it highly likely that a number of trainees could expect to come across a topic they haven't done in their traineeship. This should be considered when setting the topics.
[Q9] Given that I hadn't studied this topic previously I had very little real understanding of the law in this area. However, I am sure that had I studied this during my traineeship, it would have examined my understanding of the law in this area.
[Q10] Although I was new to this topic, I found it easy to do little work but still be able to 'question-spot'. The ability to question-spot is a necessity though, as it means you will come prepared with the right proformas etc.
[Q16] I don't think this is true. Although this pilot doesn't count, it didn't especially worry me because the exam is open book and you can discuss it with colleagues beforehand and there is an opportunity to resit. I don't think there is much to worry about as regards being refused admission into the profession.
[Q20] I don't think an assessment at the end of 7 years is a good way to allow entry into the profession. I would think the people best suited to judge whether you are competent are those people you've worked with for the past two years.
7. [Q2] & [Q18] Although training was given in-house on this area, I would not expect to be involved in this level of meeting in my firm and have never dealt with this area of law before.
[Q4] [Q10] [Q17] [Q18] With the styles and proforma available to me, the study day was ample preparation time.
[Q20] I am uncertain as to what other trainees had in the way of styles but without those available to me for the Board Minutes etc I would have struggled in the time given.
8. A break down of marks for each question would have been quite valuable as an indication of how much was expected from it and how much time should be spent on it.
9. Generally OK – however, the writing of lengthy board minutes was time consuming and should be dropped – what does this test? Why are we having discussion groups here – surely better at the PCC/Diploma? Not in the mood to listen to this after an exam – heard it all before ad nausea.
I assume work pressures are taken into account – commercial reality hits law firms too.
If pass the pilot convincingly and there are no materials changes – why sit again?
Will those that pass be accredited with TPC? Should be as we are put under greater demands than previous trainees?

10. [Q2] [Q9] & [Q18] None of the seven heads which the test could be undertaken were relevant (even remotely!) to my traineeship. As a consequence I had to start at a very basic starting point to ascertain what financial assistance actually was. I had to do textbook research mostly and did not feel anyone in my workplace could assistonly relevance was the Bank's involvement, which was clearly not being tested. I think if a trainee was in private practice, I think it would be much easier and therefore I feel this TPC is unfair and irrelevant for me.
I was saved (I think) by a friend who works for a big firm and handed me her training notes on how to fill in forms etc. This kind of information is certainly not available in textbooks. I appreciate this is test of practicalities of what is done in a traineeship but there is no way for me to glean such experience. I think fairness of relevant issues require urgent addressing. Either adjust test accordingly, insist on a 6-month secondment to private practice (not likely to go down well with employers) or give 'different' trainees exemption from text. Also, found it very tempting to rattle off everything I knew about the topic in letter to client as a way of point gathering as per university issues. I do not think a letter to a client which I would do in practice would resemble the one I wrote in the exam. Also impossible without 'copy and paste' facilities of my PC!
11. [Q1] Not sure about this (came to this pilot in order to find this out. It wasn't clear otherwise e.g. from the Stage 1 materials. A difficult issue. In other circumstances, I could look at past papers but there are none.
[Q5] Not sure where the ethical issues were in the Company Commercial paper. I had spotted some in the Stage 1 materials but wasn't asked to comment on them. Q4 did tangentially address ethics but it was in terms of what the client should do, not what decisions the solicitor should take.
[Q11] Open book!
[Q17] I didn't do a whole day. In fact I did most of my reading during the exam. (but maybe I didn't pass! [name & examination number given])
12. 1 Phraseology of the questions was too vague. Unclear what expected from first two questions.
2 Writing out a full Board Minute is too much work i.e. copying out of styles by comparison with practice. Possibly we could prepare these previously and submit them.
13. [Q3] Time limits will not show best work of trainees.
[Q9] Financial assistance is a pure banking law matter, not standard corporate.
[Q13] This tested banking knowledge, not corporate.
[Q16] I was not given a day off work to prepare – law firms not happy about us having days off work for PCC and TPC.
14. [Q2] Although I had done a corporate seat and been involved in an MBO, the size of the transaction meant I got smaller bits of work to do so I hadn't done financial assistance in isolation.
[Q4] I felt very unsure about how much preparation to do.
[Q13] I wouldn't have been able to do it without having spoken to partners from my firm first.
[Q14] It is unhelpful that the list of learning outcomes and objectives

are the same for the logbook and reviews as for the test, this is confusing. You don't know exactly how the exam will be judged.

[Q16] Under unnecessary pressure.

[Q18] As mentioned above, I found I had to ask for help, which is the usual when you're a trainee, but there can't be much point to assessing that.

[Q19] Not sure.

[Q20] I think it is a particularly poor way to assess this and it comes after admission as a solicitor which seems bizarre.

PUBLIC ADMINISTRATION

COMMENTS

1. [Q2] I had never dealt with the area of law before and was forced to learn it from scratch.
 [Q4] I spend a couple of hours a day (at least) for 4 weeks preparing. While I am fortunate enough to have an employer prepared to let me spend the time on it, other may not be as lucky. It is unfair to expect trainees to work a full day and then study into the evening.
 [Q11] I am not clear how my learning about, then writing about this area of law tested my skills, except to the extent that they had already been tested in the degree/diploma.
 [Q18] I do not feel it tested anything I hadn't already demonstrated at degree/diploma level. It did not give me an opportunity to demonstrate the skills I developed as a trainee.
 [Q20] I do not think that an open book assessment can test the ability of a trainee. It is endeavouring to measure practical skills by way of academic testing.
2. I had not dealt with this area of law during my traineeship therefore I felt at a disadvantage.
 I had no time to take a day, or days, off work to fully prepare for the exam.
 I felt that the actual exam question did not bear as much relation to the preparatory materials as I expected it would.
 I felt it was unreasonable to be expected to travel to Edinburgh as I had to leave home at 6.40 a.m. and take 2 trains to get here.
3. [Q20] I have already had open book assessments. They were the 5-6 hour exams I sat in the Diploma plus the many exams I sat in my Law Degree. I fail to see how this assessment adequately or appropriately adds anything new to the assessment of my overall competency as a solicitor. Working as a solicitor is not the same as taking an exam. An exam scenario does not accurately measure someone's overall ability. The decision as to whether someone should be allowed into the profession should be based on the criteria of having a law degree, passing the Diploma and performing to a certain standard throughout the whole of the traineeship not on the results of a 3 hour exam at the end of 7 years of training.
 [Q16] The prospect of failing the TPC and being unable to enter the profession after many long years of training seems incredibly draconian and unfair. As such, it puts an unreasonable amount of pressure on trainees to pass. To do otherwise would result in effectively being unable to pursue their chosen career.
4. The test was focused on a small area of the topic we were asked to consider which meant I spent a lot of time studying things which were completely irrelevant.

Appendix 2

Focus Group Data

Trainees were divided into four groups: Conveyancing, Civil Litigation, Company, and the other areas in the fourth group. The summary results of the semi-structured discussions are set out on the following pages.

FOCUS GROUP TOPICS

CONVEYANCING

Administration of the TPC: was it effective? How could it be improved?

Very few comments on this aspect!

The opportunity to resit the “real” TPC must be offered before the end of the traineeship (ie not merely at the next available diet).

It should be possible to postpone sitting the Test by a week, if the trainee is busy in the firm.

Did the assessment examine the assessment criteria (sent to all trainees in June at beginning of process of recruiting for pilot) and the Learning Outcomes (not sent in June, but sent more recently)?

Initial comments were that it did not assess time and work management, negotiation skills or financial skills. When it was explained that some of the Learning Outcomes would be assessed in the workplace and therefore by means of the Quarterly Performance Reviews, it became evident that there was limited understanding of the overall structure of the TPC by the trainees and, they claimed, by their firms.

It did not test ability to communicate with different audiences.

Too much concentration on Ethics – already examined to a greater level in the Diploma.

There was an expectation that Stage 2 would be more practical, but the perception was that it had concentrated on the law and ethics.

How did you prepare for the assessment, especially regarding quality and quantity of legal research?

All trainees had put in significant preparation time, often late at night. General agreement that it was difficult to judge whether this had been adequate before knowing whether they had passed or not.

Most trainees had consulted colleagues about the Stage 1 materials.

There was a general feeling that it had not been possible to ask for time off to study, although also an acknowledgement that things might be different in the “real” TPC.

Only one trainee had been given the recommended day off (in the form of two half days). Another trainee had arranged a day off and had gone to the office to make use of the firm’s resources. His presence had led to an assumption that he

was there to work and he had subsequently had to go home, which meant that he did not have access to books.

One trainee had been told not to expect a day off as he was already getting two weeks "off" to go on the PCC!

The lack of guidance about what, precisely, would be required had led to trainees attempting to cover all angles in their research, some of which were not required.

What was it like sitting the exam? Easy, tedious, difficult, interesting?

Trainees refused to be drawn on this one, saying that they would not comment until their results were known.

Most anticipated "strain" in the real TPC.

There was general agreement that there was too much in the paper.

Was the exam "pitched" at the right level?

Most trainees felt it was. However, there was concern that if training in a firm that does not do domestic conveyancing then trainees could have difficulty, relying heavily on Diploma materials. Also, some trainees do not do missives and would not know how to proceed.

It was felt there was ambiguity in the paper – it was not clear whether what was being sought was how to deal with a transaction generally or the specifics of each letter. Inconsistencies were detected between the facts and the problem, almost as if the rubric was wrong.

It was felt that the scenario was unrealistic as a trainee is unlikely to be left on his own to deal with such an issue.

Conflict of interest came up three times, which caused confusion amongst trainees who felt they must be misunderstanding the problem.

The Stage 1 materials pointed in too many directions. Trainees found it difficult to focus on which styles might be required in the exam. The point was made that, in the office, there would be access to all styles but if, in the exam, the wrong style was brought to deal with the Stage 2 issue, does that mean one is incompetent?

Did you learn anything from the assessment?

Thorough revision of Diploma notes.

Research into planning as it was not featured in the Diploma and not dealt with in the traineeship.

How could the assessment be improved?

Marks on the paper would assist with planning the time and also give an indication of how much depth was required.

More guidance in advance on whether the Stage 2 problem will focus on, for example, drafting.

More guidance on which books or styles to bring or, alternatively, a selection of styles to be available on the desk on arrival. One candidate also suggested having the relevant texts available also.

A split between domestic and commercial conveyancing.

FOCUS GROUP TOPICS**COMPANY COMMERCIAL****Administration of the TPC: was it effective? How could it be improved?**

Fine. Codes on desks a bit fussy: an extra complication you don't need.

Invigilator cut the time short by 2 or 3 minutes.

The Invigilator did not use the clock in the room: "we'll go by my watch" but did not know what time the Invigilator's watch told.

Did the assessment examine the assessment criteria (sent to all trainees in June at beginning of process of recruiting for pilot) and the Learning Outcomes (not sent in June, but sent more recently)?

There was not really any professional conduct/ethical issues raised – mainly technical. This was generally agreed. It was there, but it was not highlighted. It was not overt enough. The last question brought up the ethical point – but it only said "Advise". The bottom line is it is the Partner's call – not a trainee's.

If the question is important it must be overt: there was a shroud of technical questions and it is unfair to put the ethical point in that way.

Did not really have to "pick out key facts" – there were no smoke screens, just add-ons in the second paper.

Ability to research: it is such a wide area, that some of the Trainees had not had any experience in the area at all.

How did you prepare for the assessment, especially regarding quality and quantity of legal research?

Should allow two days of work: The Law Society passes the buck by only "Recommending" and that only one day.

Four weeks can be quite a short time in corporate work because you might be involved in a busy spell at work or some settlement. (See later).

What was it like sitting the exam? Easy, tedious, difficult, interesting?

- Too much drafting: unnecessary and tedious. Not really a skill spending ages drafting a Minute. Better to e.g. draft headings.
- What was the relative importance of parts of the exam? Writing the letter and preparing the Board Minute seemed important. But if the ethical point is the

big issue, why is so little time allocated to it? Suggested that it should have been the first question – because, by then, had done all the documentation. The ethical point seemed to be a completely separate question.

- Big criticism: no indication of which were the most important questions.
- Preparing the documentation. Examinees had done this before the exam but wondered if they could attach their documents to the exam paper or had to write it out all again. Most wrote it out all again, which resulted in a rush and far too much writing. One person had attached it to their paper.
- There were asked the same things in two stages. The second stage did not seem to add enough to the equation.
- Very much knowledge-based: sees a dichotomy between the difference types of exam – the “technical” exam and the “how to be a lawyer” exam. What was this?
- When drafting the letter, did so from the point of view of an exam – made too many points, built references in etc and wouldn’t in fact send out such a letter to a client.
- Marking! If using a marking system, you have to be testing the knowledge of the law.
- Very knowledge based: If not practising in that area, had to do everything “out of the book”.
- Problem can be addressed by being clearer about what you are going to have to do in the exam e.g. writing this or that.
- There was not enough of a clear steer in the first set of information about what the exam question would be one.
- People who had had a fairly narrow traineeship seemed to struggle with the subject matter but people who were doing a more general, corporate traineeship thought the subject matter perfectly reasonably.
- RJE comment: The trainees were still tackling this far too much as a knowledge-based exam and expected that it should relate to the specific area in which they were practising.

Was the exam “pitched” at the right level?

Exam was “pretty fair” – but too much in the time available.

But if can bring in the pre-prepared material, would be ok.

Did you learn anything from the assessment?

- What Financial Assistance is!
- Would like a grading for the pilot.

- Would like to know, if fail, why did so (for the pilot).

How could the assessment be improved?

Not so knowledge based.

General Points

The examinees wanted to be involved in the on-going process. They want to see their own results. They want to receive a general report about the result of the second pilot. They suggested that the second pilot papers and the comments be put onto the Law Society Website. They suggest that they are given model answers to the questions so that they can check them against their own.

They think that four weeks preparation is too short, particular in this area. Six weeks would be must better, particularly if they did not know the subject matter and firms must be forced to allow the trainees time off.

One or two of the trainees in this area said that they knew far more about the subject matter in other areas, which they had not even done during their traineeship! For example, one of them said that they knew far more about the private client paper than they did about the company commercial.

Maclay Murray Spens Trainee said that their firm was displaying a negative attitude towards the PCC and the TPC and for example had not allowed them any time off to prepare for the pilot.

All want past papers as a guide to going into an exam and agree that this is a necessity for people sitting the first real test.

FOCUS GROUP TOPICS

CIVIL LITIGATION

Administration of the TPC: was it effective? How could it be improved?

It should have been made clearer that the Civil Litigation Stage 1 materials consisted only of one file note. Several trainees had assumed they were missing some documentation and had phoned the Society to check.

Was not clear that there would be more documentation provided on the day of the exam. *Note by LT – this is in fact stated in the document "TPC – Guidance for Trainees" which all trainees have.*

Did not know what to do with the file note – instructions required.

Did the assessment examine the assessment criteria (sent to all trainees in June at beginning of process of recruiting for pilot) and the Learning Outcomes (not sent in June, but sent more recently)?

Assessment Criteria

- Demonstrate an ability to recognise key professional conduct and ethical issues as set out in the Law Society of Scotland's Code of Conduct - NO
 - Demonstrate an ability to identify key facts – YES BUT ONLY AT STAGE 1
 - Demonstrate an ability to identify key legal issues – ONLY AT STAGE 1
 - Demonstrate an ability to research and to communicate the findings of this research in a clear and effective way - NO
 - Demonstrate an understanding of the strategic application of relevant areas of law to the problem/issues – IN PART
 - Demonstrate an ability to apply the legal skills listed in the TPC learning outcomes in the performance of professional tasks for the client – NO
- COMMENTS

Learning Outcomes

On successful completion of the TPC the solicitor will have demonstrated the ability to integrate the following principles and skills in a framework for problem solving i.e.

- problem definition - YES
- fact investigation - YES

- legal issue identification and assessment - YES
- advice and decision-making - YES
- planning and implementation – YES

Professional Conduct and Ethics - NO

Effective Communication Skills – IN PART

Time and Work Management - NO

Dealing with Clients – IN PART

Legal Research – IN PART

Drafting – YES BUT THE DRAFTING TASK WAS UNREALISTIC. WOULD HAVE BEEN BETTER TO ASK WHAT WOULD BE BEST FORM OF COMMUNICATION, THEN PREPARE PLAN FOR THIS COMMUNICATION.

Negotiation skills - NO

Financial skills - NO

Office Procedures – NO

Note by LT – explained that not every learning outcome can or will be assessed in every exam

General comments re what the exam did/did not assess

It did not assess what done in traineeships.

Did not assess skills – too much emphasis on legal knowledge.

Skills cannot be tested in the context of a written exam. Too abstract.

Did not give trainees the opportunity to do their best work.

How did you prepare for the assessment, especially regarding quality and quantity of legal research?

Most trainees were given one day off to study.

Some only looked at the Stage 1 materials the night before the exam.

The Stage 1 materials (in this case consisting of only one file note) did not help trainees direct their preparation. Too many issues suggested in the file note.

Spent time researching issues which were suggested by the Stage 1 materials but which did not come up on the day.

What was it like sitting the exam? Easy, tedious, difficult, interesting?

It was OK.

3 hours was reasonable for the amount of work to be done.

Was the exam “pitched” at the right level?

Yes, but unrealistic tasks were set.

Were asked to write letters which would not be written in practice.

Did you learn anything from the assessment?

No.

How could the assessment be improved?

Provide more documentation at Stage 1.

Stage 1 materials should direct research and preparation much more.

Need more instructions about what to do with Stage 1 materials.

Prescribe or suggest texts – this would help to direct research, and avoid having to bring masses of books to the exam.

Civil Litigation is too broad a heading – should be divided up. The exam was unfair for some trainees.

Specimen papers and model answers should be published in advance of real TPCs.

Handwriting difficulties – trainees should be allowed to photocopy then hand in original answer paper, take photocopy away then hand in a typed version within 48 hours.

Exam must be more closely related/tailored to traineeships – this paper did not test what the majority of trainees had done in their traineeships – firms should set exams for their own trainees based on work done.

Need opportunity to exercise professional judgement, eg exam might require candidate to draft letter to client, but trainee might consider a letter not to be the most appropriate action – should be flexibility to do something else.

FOCUS GROUP TOPICS

ALL OTHER AREAS OF LAW

This group of trainees was composed of a variety of areas: Public Administration, Employment, Family, Criminal, Private Client.¹ As a result some questions were treated by the facilitator as generic, highlighting where appropriate the area of law; while others were treated as specific to an area under examination. This is indicated in the summary notes of the session below.

Administration of the TPC: was it effective? How could it be improved?

Emp: the precognition was inadequate, and therefore there was considerable information that we needed to know about this fact scenario that we didn't have. Another trainee noted that it was important to be given notice of the essential clauses. Two PA trainees worried about which texts they would need in the examination, particularly because they had little knowledge of the Mental Health Act. Should they, they wondered, take the text into the examination, or just copies of sections. They noted that the PA paper was delivered late, and wondered if this were a ground for appeal.

The PC trainees were not sure what the area of 'Private Client' covered, even when they had access to the papers. -- what sorts of questions would be asked, they wondered? It was noted that executry work was not done by everyone doing PC.

Did the assessment examine the assessment criteria?

- Some trainees were uncertain as to whether they should assume that they were at a particular stage of the transaction?
- 'What about the form of the communication?' was a point raised by a number of trainees. The form of the TPC meant that they were not able to choose the channel of communication or indeed the strategy that they would have adopted in the office – eg how to contact the client, how to explain legal issues, when they would have brought the client into the office at various points, etc.

Two examples of this. In PC – a number said that they would not have written to a client with all that complex material. But examiners were asking for information as per an academic exam, it appeared; and therefore this was not a test of traineeship competence but of legal knowledge. In Employ. – it would have been easier to have seen the client, and *then* tailored the letter. It was agreed that if oral skills could be included it would be useful; but a number of trainees commented that

¹ Abbreviations as follows: Emp. = Employment; Fam. = Family; Crim. = Criminal; PA = Public Administration; PC = Private Client

they would not have wanted to have interviewed clients under examination conditions. It was commented that in a number of papers it would have been helpful to have had a general question such as 'What would you do with your client in these circumstances, rather the pointed, academic questions they were presented with.

- It was difficult to see how some of the criteria could square with others. If writing a letter for example, on an area of law, then if you were addressing a senior partner you wd assume an absolute knowledge of the law, set out in a certain manner. Letters to clients, though, would be very different. In a similar way students would not go into painstaking detail to a client on why they could not advise the client. The level of detail would be unrealistic...
- SE trainees had difficulties with relevance of materials, as with Crown office trainee
- Employ – she had not advised employer, and this was a case of advising the employer.

Preparation

PC

- One trainee read the papers, and that was about it. Another spent around three hours preparing for the exam.

PA

- Both the Executive trainees spent about 3 hours per day in the period between receiving the papers and sitting the exam. They thought that there was a considerable disparity in the amount of preparation they had to do, and the preparation undertaken by other trainees. SE trainees had to research almost *ab initio* ECHR issues, Mental H., Judicial Review, -- very big topics, and far too much work in comparison to other subjects – applying all this to a specific Act, and ECHR issues.
- Even PA trainees were in the same situation – the materials tested their academic knowledge.

Criminal

- Sole criminal trainee was a Crown Office trainee. She observed that the materials were too wide ranging – cdn't predict what the questions wd be. Basically the issues turned on precognitions as far as she could see. She wdn't have known what to look up on it
- Trainee spent very little time on preparation because she was unsure what to prepare.

Employment

- About three hours preparation in total was carried out by each trainee.
- Area of law covered was relevant, good materials.
- It appeared easier to predict what would be in this examination than others, particularly re remedies, Tribunal, etc.
- Research notes were produced, esp re redundancy, and style banks were useful in office. Quite straightforward case & area.
- The size of the firm matters a lot re the support that trianees get, and this would be replicated across areas of law, and across different TPCs, they felt

- Not sure whether the question did bring up the conflict of interest issue that the firm had identified as being part of the matter. Was this a trick question? This shd be clarified in the materials.

Family

- Well drafted papers. Esp re several different craves and remedies. Context was familiar. Easy to identify what to do for the client. Overall context of a client was familiar.
- Trainee who had just moved into family had to do extensive research, though, because unfamiliar with the area of law.
- Type of action was uncommon, but well signalled.

Experience of the exam

PA

- Attendance note was interesting, but not the actual questions in the exam.
- Too much time? Some thought so, some not.

Criminal

- Infuriating. The examination was completely irrelevant to the Crown Office trainee's experience of learning the law.

PC

- Cd have been worse. Useful to indicate marks and time to spend on the questions. The marking structure needs to be clarified – how will it be marked? Trainees were unsure about this, and needed more in the way of guidance on this, particularly because it was a format of examination that they were relatively unfamiliar with.

Employment

- OK. Took about 2.5 hours, with time to look over the questions.

Family

- Yes, adequate.

Pitched at the right level?

PA

- Complex, but we cd handle it. Practical skills weren't particularly evident in the exam, though – was this a test of substantive knowledge or practical skills?

Criminal

- OK for defence solicitors, but entirely irrelevant to Crown Office trainees.

PC

- OK. But still too academic rather than practical – eg we cd have sat this at the end of the Diploma. Wouldn't it have been more appropriate to have been asked to have drafted a will? (Even though this, too, was carried out in the Diploma...)

Employment

- OK – about right – drafting a letter to client is common enough.

Family

- Action OK, and the info was appropriate to the level of investigation required.

Did you learn anything from the assessment?

PA & SE

- Yes, regarding judicial review + Mental Health

Criminal

- Didn't know what to research, therefore just applied common sense. Learned nothing

PC

- Nothing new, but covered areas we knew

Employment

- Redundancy (to someone new to the field),
- Not to anyone who has done the 6 months in a seat.

Family

- Particulars of the specific action – not general principles. But we knew most of the specifics of a general action.

How could assessment be improved

- Handwritten letters – not normal practice. We don't handwrite letters: we all have our own office practices that we adhere to, and within which we ought to be tested if we're to be tested at all.
- Exam is not going to be entirely realistic: people whom you work with will have a far better idea of how competent you are, not the TPC assessors.
- This will always need to be an academic style of exam. Being in a room for 3 hours, sending out a letter without the partner looking at it, and also having four weeks to look at the issues. This is just not practical work or practical assessment, but if we're not to be assessed at work, then this is the only way to do it.
- Don't penalise people for whom this is not their main traineeship work
- Some people don't demonstrate best legal skills on paper necessarily. And what about the other skills that are part of the training process?
- Unfairness re someone who has spent 6 months in PC, eg, and someone who has only spent a little time on it.
- Some of the eight areas are huge. Commercial, eg, in comparison to Employment or Family practice is big, and those undertaking the exam in this subject are at a disadvantage as a result. PA is a vast area – depends on the LA that you're in as to what work you undertake. Same with the SE – eg some trainees get a lot of Judicial Review work, others none.
- Where were the ethical issues? Not very clear.
- Publish the questions as samples, and sample answers as well.

Problematic areas identified by trainees in this group:

1. Disparity in preparation and work within groups and between groups
2. Size of firm, levels of support given to trainees within the firms, levels of support as regards skills training, and documentary and substantive legal knowledge.
3. Disparity in size of each of the eight areas of law.
4. Ethical issues in the assessment unclear
5. Place of skills is being eclipsed by substantive knowledge
6. Some groups, eg Crown Office trainees, still require to be brought into the assessment process.

Appendix 3

Statistical Results

Appendix 4

Second Pilot Questionnaire

A copy of the questionnaire used in the second pilot is set out on the following pages.