

# Patent Examination Board

## 2019 Examination Session – Candidate Survey Report

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# Patent Examination Board

## 2019 Examination Session – Candidate Survey Report

### 1. Introduction

This report consolidates candidate feedback for the Patent Examinations Board (PEB) Qualifying Examinations. As this report is longer than in previous years, a table of contents has been included.

In recent years, candidates have been critical of many aspects of the examination process. The Patent Examinations Board has continued to improve the exams and there are some signs of positive progress:

- Candidates saw visible improvements to the exams and supporting materials in recent years, and found the recent sample pass scripts the most useful.
- Some candidates found the FD4 exam more manageable this year and satisfaction rating increased slightly.
- Satisfaction levels were generally good for FC1, FC3, FC4, FD2, FD3.
- Satisfaction increased for FC1, compared with 2018.

However, the majority of candidate comments are critical of the PEB and CIPA's provision of support to prepare for the exams. Candidate feedback this year included:

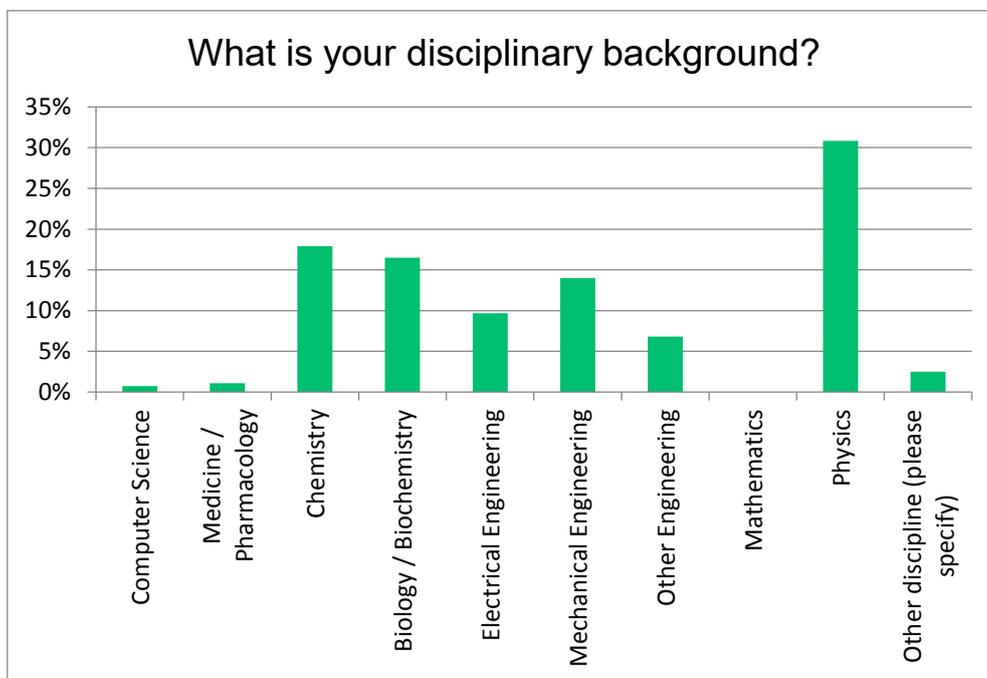
- Continued dissatisfaction about the demand for memorising amounts of material, the time pressure / large volume of material to cover, inconsistency in marking from examiners, fairness of the process and relevance of the exams in assessing skills needed to be a competent patent attorney. All of these concerns have been raised in previous surveys.
- Frustration that the PEB acknowledges candidate feedback without taking it on board, e.g. the contradictory statements in the examiners' reports that candidates seemed to have enough time because they managed to attempt all parts of the paper, while also saying that the quality of answers was low.
- Efforts to address the time pressures have not worked because although the exam times have lengthened, so have the exam papers.
- Several comparisons were made between the PEB and EQE exams, with many comparing the EQE more favourably.
- A new issue raised this year was that some candidates felt that the CIPA webinar focused on defending FD4, which reinforced the view that candidate feedback is not being fully considered. Many candidates say that the exam is not fit for purpose, and also that many other professionals they talk to feel the same.

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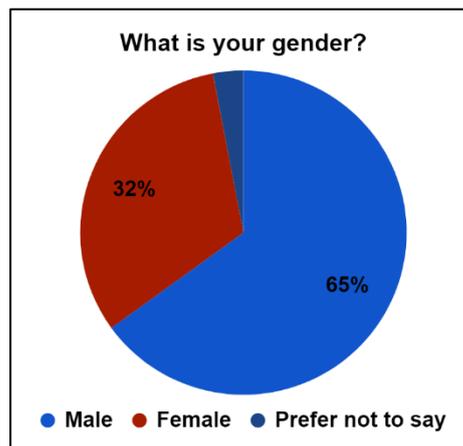
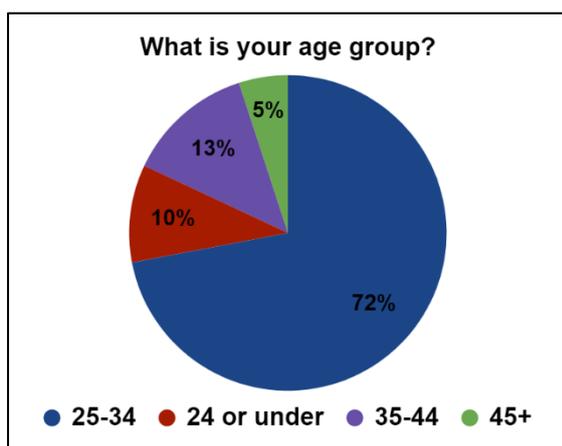
## 2019 Examination Session – Candidate Survey Report

### 2. Candidate Profile

Like the previous year the majority of the candidates came from a physics background. Other disciplinary fields were geology, natural sciences, electronic engineering, materials science, microbiology and telecoms.



The majority of candidates were aged between 25 and 34 (72%), male (65%) and white British (71%).



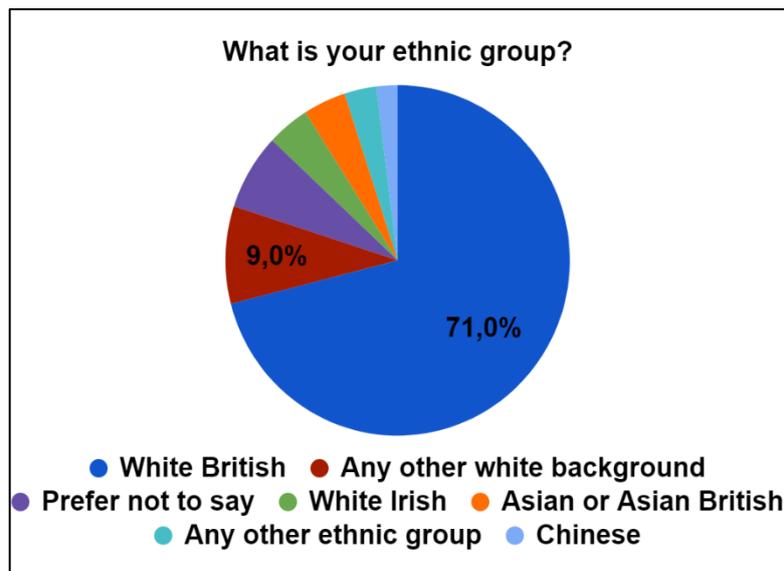
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### 2019 Examination Session – Candidate Survey Report

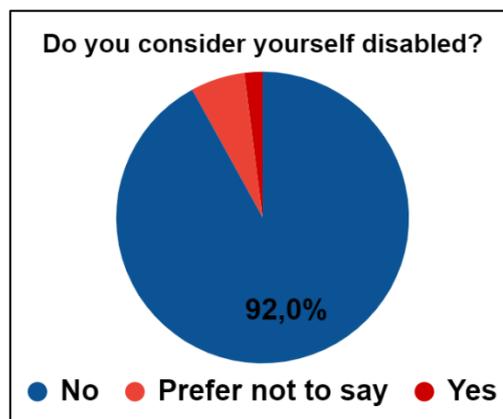
84% of candidates are white (white British or other), and the next most commonly selected category was “Prefer not to say”, selected by 6.4% of candidates. 4% are Asian / Asian British and 3% are Chinese.

90% of candidates speak English as their first language. Other first languages spoken are

Chinese, Danish, Dutch, Kutchi, French, Russian, Czech, Cantonese, Bulgarian, German, Romanian, Spanish, Swedish and Turkish.



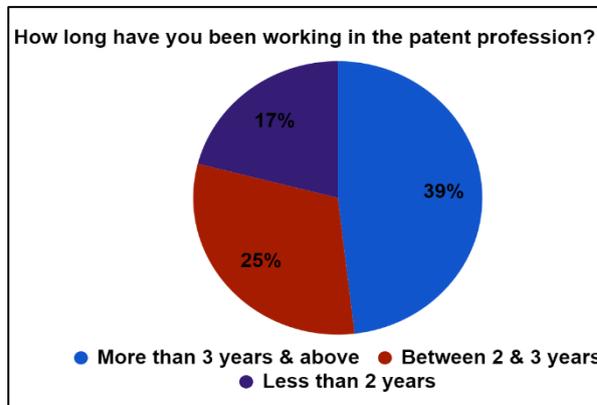
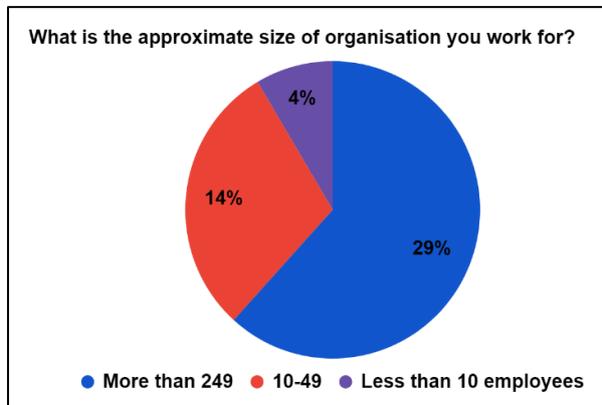
6% of the candidates have a disability, and 2% prefer not to say. One candidate did comment on the need to make special consideration clearer in the PEB guidance.



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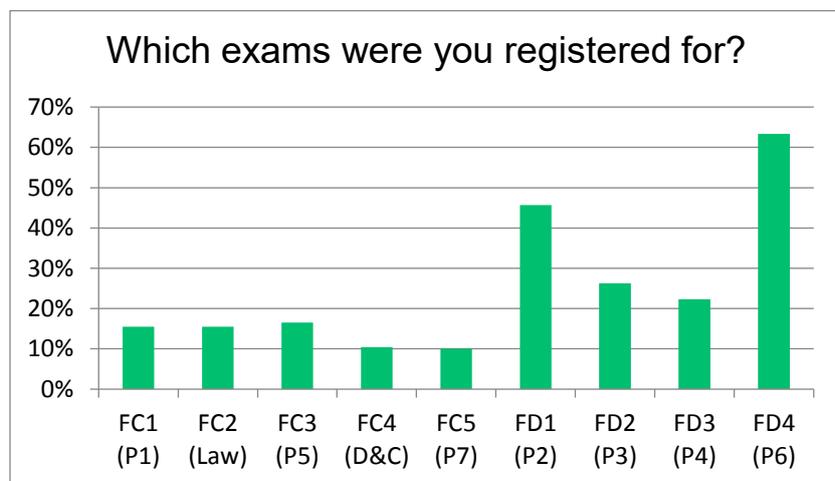
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Just over one third of candidates have worked for more than 3 but less than 5 years, 19% have more experience, and nearly half of candidates have less than two years' experience.



The majority of candidates work for firms with 50 – 249 employees, and in private practice. 1% work in other organisations.

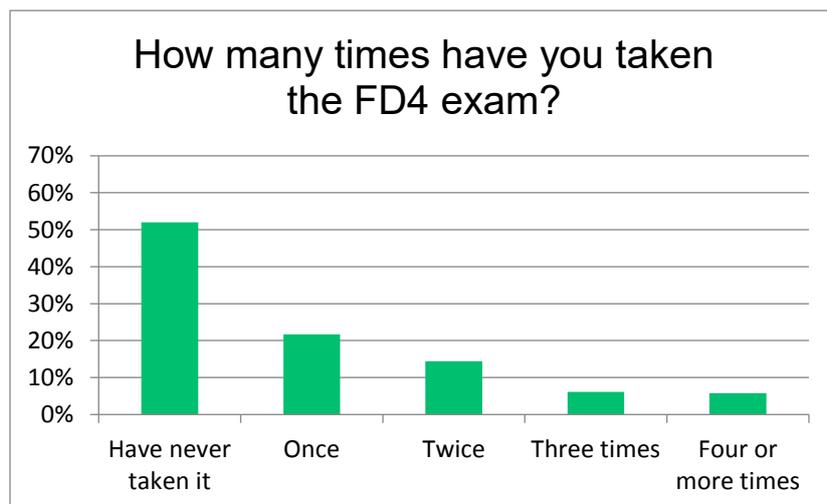
### 3. Candidates' registration for exams



Nearly two thirds of candidates (63%) were taking the FD4 exams. 46% of the candidates were taking FD1.

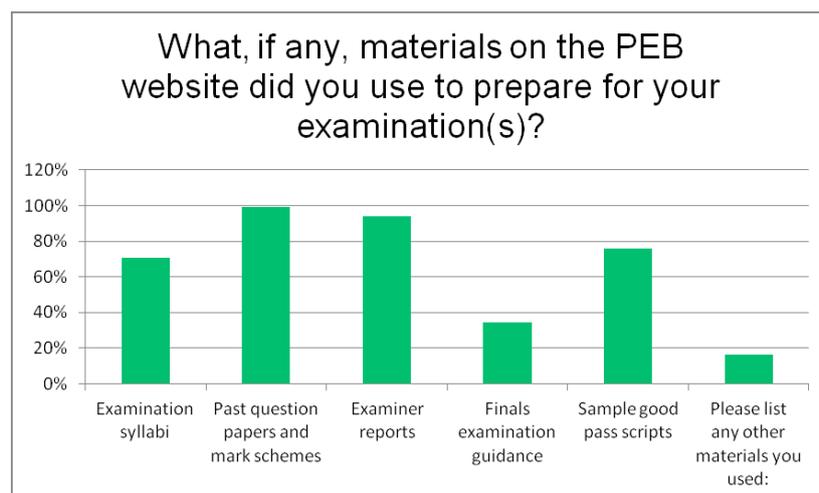
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22% of candidates were re-taking the FD4 exam for the first time. 26% had taken it more than once, of these 5% had taken it 4 or more times. Most had last taken it in 2018 (80 candidates), with 9 candidates having taken it in 2017, and one each in 2016, 2015 and 2014.

### 4. Use of supporting materials to prepare for exams



99% of respondents used past papers and mark schemes. Less than half used the Finals examination guidance.

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The most-used additional materials mentioned by candidates included:

#### Courses

FD4 resitter course  
JDD Courses

#### Publications

Study Guide to the Patents Acts (Doug Ealey)  
Infringement and Validity (Updated by Philip Barnes, originally by Nigel Frankland)  
UK Patents Act  
Manual of Patent Practice  
Black Book

#### Other

Materials provided by the JDD courses  
Webinars  
CIPA guide to P2  
Internal tutorials  
Internal meetings  
BAILII  
Assigned CIPA mentor

43% of candidates said they found the materials useful and more than a half (52%) said “yes – somewhat”. 5% said they did not find the materials useful.

Several candidates commented that they found the sample pass scripts more useful than the mark schemes and examiner reports. They also remarked that the most recent mark schemes were the most useful, noting that the clarity had improved in recent years.

Positive comments included:

*I found the good pass sample scripts helpful to gauge an idea of what was expected in the exams. I found the more recent mark schemes which have a mark for each point (compared to the older mark schemes which do not specify exactly what points got a mark) the most helpful.*

*Quality of past paper marking schemes have improved in recent years and seem to give a clear indication of what is expected (at least as much as is possible in the FD4 exam!)*

Candidates also commented about inconsistent mark schemes in relation to the question about usefulness of materials. In relation to the survey question about whether the exams lead to fair outcomes candidates highlighted problems with the mark schemes. Errors and perceived inconsistencies between how marks are awarded have caused some candidates to lose confidence in the fairness of the process. There is also a recurring concern about the balance of the mark schemes being clear enough (but therefore somewhat strict and rigid in not allowing other acceptable answers) or too flexible and therefore subject to the discretion of the examiners.

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Negative comments included:

*Take drafting for example... there is no way that a fixed mark scheme can fairly represent and assess the range of answers provided. Not only this, but the actual mark scheme is at odds with good drafting practice (always overly functional, and overly broad protection that would never be novel).*

*Marking - the sooner you introduce scaling the scores in foundation papers, the better. Passing exams under conditions which completely do not reflect any real life situations says nothing about your value as a patent attorney and this especially applies to exams where students are required to memorise an immense amount of material and are then asked to regurgitate it at the exam (i.e. foundations)...*

*The Examiner reports and mark schemes for FD4 are unhelpful. They contradict each other and give the individual examiners broad scope to award (or not award) marks. Marks are often awarded for 'sensible comments on X' yet candidates often find they have discussed X but no marks were given.*

#### 5. CIPA Webinar

40% of survey respondents had attended the CIPA FD4 webinar. Of those who attended, 8% found it very useful and 56% found it somewhat useful. A third did not find it useful. Several candidates said they were not aware of the webinar.

Positive comments about the usefulness of the webinar included:

*Useful pointers re advice section to client, i.e. 7 or 8 'headings' provided which must be considered.*

*Hearing from a head examiner about how to answer, common mistakes made etc, was generally helpful.*

A few candidates who had taken FD4 before said they were no closer to understanding how to pass. Others said it did not provide any new information over and above existing materials, the advice was inconsistent and was patronising in tone.

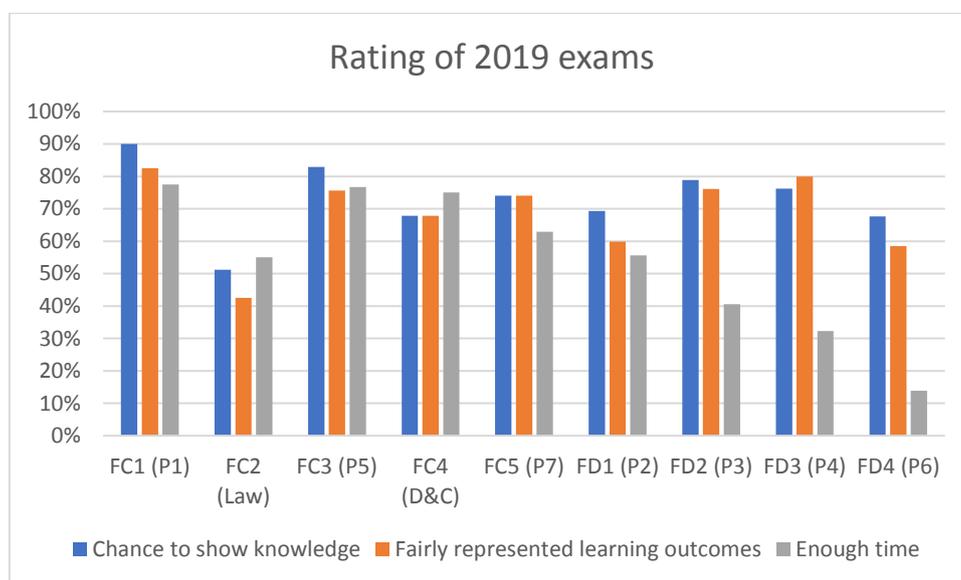


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### 6. Satisfaction ratings for individual exams

Candidates were asked to rate each exam as to what extent it gave them opportunity to demonstrate knowledge, how much it fairly represented learning outcomes, and whether there was sufficient time to complete the paper. The chart below shows the percentage of candidates who said ‘a moderate amount’, ‘a lot’, or ‘a great deal’.



#### FC2 Examination

The lowest ranked exam in terms of chance to show knowledge and fairly representing learning outcomes was the FC2 paper. Under half of this year’s candidates (43%) felt that the exam fairly represented learning outcomes. Several candidates found this year’s FC2 paper obscure.

*Comments: Yes, specifically regarding the FC2 examination. This year's questions testing the IPReg Rules was quite far from what was described in the syllabus and what was stated in the Examiner's report of the past papers...*

*The FC2 exam, particularly Part A was a bit rogue this year compared to previous years asking questions that required quite deep knowledge of a narrow part of the law, especially considering the breadth of a subject like English law.*

*Some of the more recent papers seem to be trying to make up for a lot of parts of the syllabus having been covered in previous years by asking questions that are based on more obscure parts of the syllabus. This seems unfair and unnecessary, because the exam is meant to check whether a candidate has reached the threshold to practice. Therefore, it is not inherently problematic if the topics covered by the exam are similar every year.*

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#### FD4 examination

FD4 was the lowest ranking exam in terms of having enough time, with only 14% of candidates saying there was enough time to complete the paper. FD2 and FD3 also scored quite low, with under a half and a third of candidates (respectively) saying there was enough time.

In response to candidate concerns about time pressures in previous years, the time limit for some exams had been increased. However, many candidates noted that the length of the papers has also increased so the problem persists. Comments included:

*FD1 totally fine. FD4 is intended to require careful and considerate analysis of the patent documents, and the construction of a comprehensive answer and advice, yet many people have to rush or abandon sections so that they get to the end and complete the Exam, thus meeting the minimum pass requirements. The time was extended from 4 to 5 hours, which caused a spike in pass grades the next year, until the paper bloated to fill the extra hour, rendering the extra time useless.*

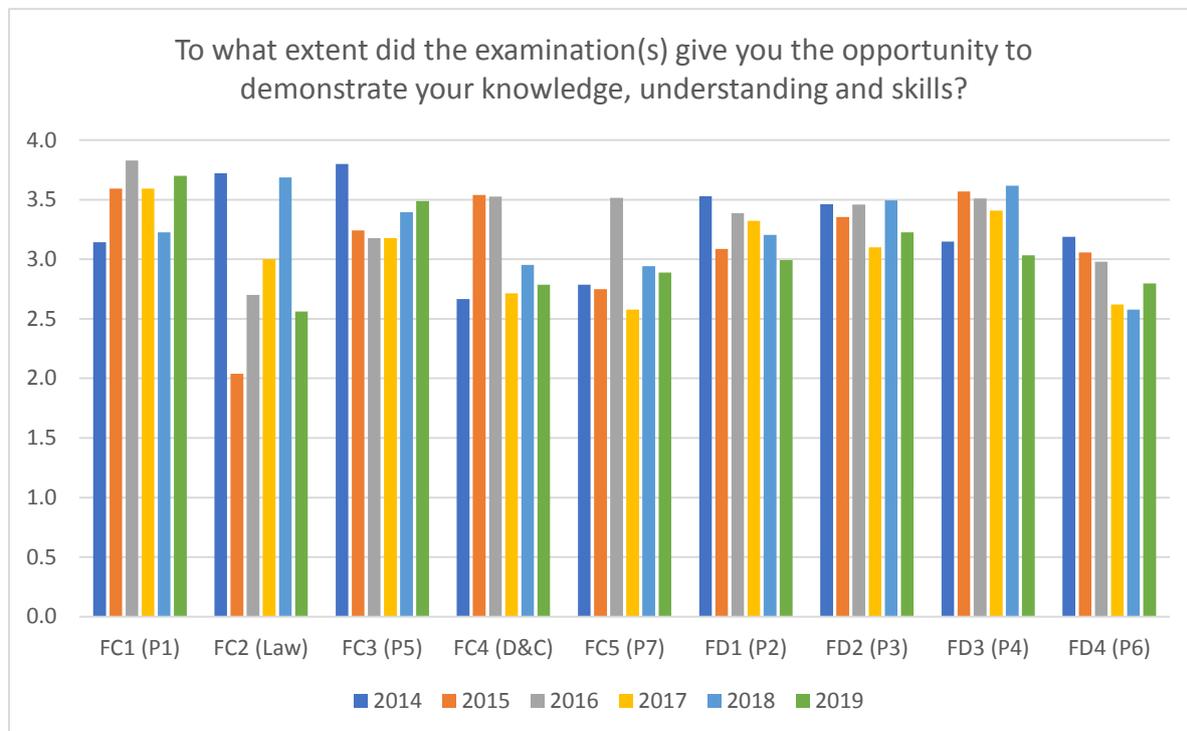
Several candidates also saw the issue of time pressure as an illustration of the PEB failing to take on board candidate feedback, and this is covered in section 9 of this report.

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### 7. Annual trends of satisfaction

Since 2014, candidates have been asked ***To what extent did the examination(s) give you the opportunity to demonstrate your knowledge, understanding and skills?***



Scores were given a weighted average, to assess trends for the past six years.

Not at all = 1

A little = 2

A moderate amount = 3

A lot = 4

A great deal = 5

The chart shows:

- Relatively consistent and high levels of satisfaction for FC1 and FC3 (a score of 3.5, between a 'moderate amount' and 'a lot').
- After several years of decreasing satisfaction, the FD4 exam saw a slight increase this year, though still the lowest ranked exam in terms of the opportunity to demonstrate knowledge, understanding and skills. Several candidates commented on improvements to the FD4 paper this year compared to previous years:

*Drafting and P6 [FD2 and FD4] were well written.*

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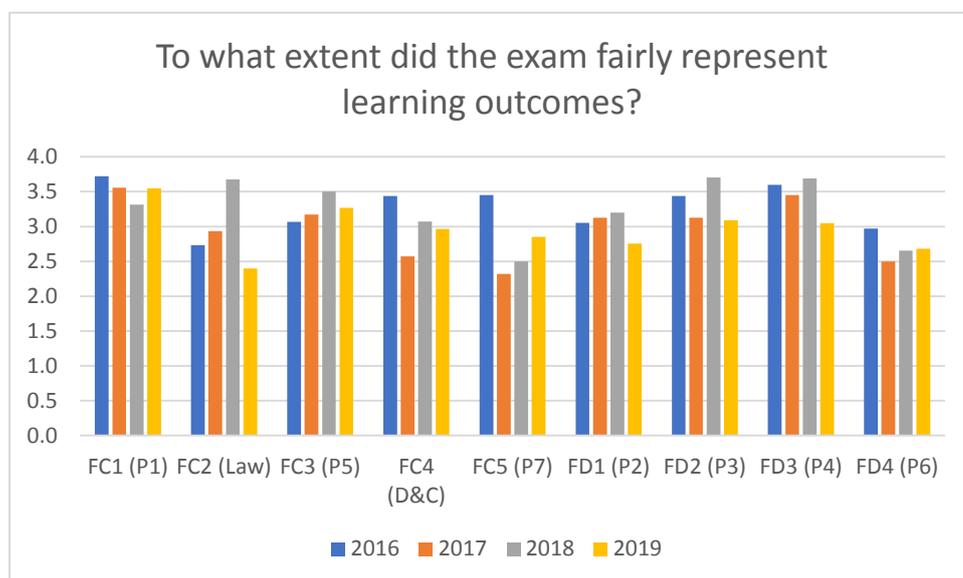
*(Compared to 2018) The technology of the FD4 paper was more easily understandable, thanks for that.*

*FD4 this year seemed much more manageable than 2018 (less information to digest which was more appropriate for the time scale and exam conditions)*

*It is clear that some effort went into making the 2019 FD4 paper more approachable...*

- There was a significant drop in satisfaction for FC2 this year, as highlighted in the comments above, and smaller drops for FD2 and FD3.
- A gradual decline in satisfaction for FD1 over the last 6 years, to 'a moderate amount'.

From 2016, candidates were asked: **to what extent did the exam fairly represent learning outcomes?**



- The lowest ranking exams – FC2 and FD4 show a score between 'a little' (2) and 'a moderate amount' (3).
- As above, FC2 saw a significant drop, and FD1, FD2 and FD3 all saw a smaller drop in satisfaction.

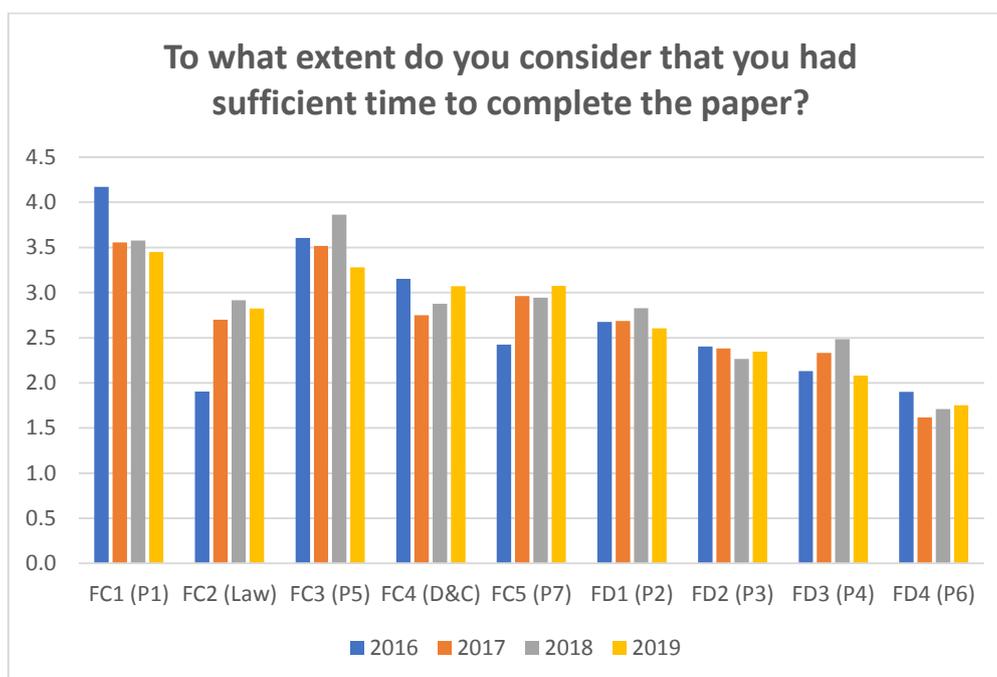
Several candidates commented that the FD1 paper was different this year:

*FD1 questions were longer than usual and appeared to be more open-ended than usual, so that there were many more issues that could have been discussed. Given the existing time pressure in this exam, the wealth of reasonable avenues to pursue made it feel more unfair compared to previous years, especially given that there are fixed marks for fixed points (rather than more valid points than marks available, with a cap on the total that can be awarded for a question, like is the case for some of the foundation exam questions – I think this approach should be adopted in FD1).*

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*The FD1 paper is getting less straight forward each year, it is becoming very arbitrary where the marks will eventually be, so I felt like I had to write enormous amounts in order to cover all possibilities. Papers previous to 2017 did not have this problem. It seems that to reduce the number of people passing the examiners are not awarding valid points and awarding very obscure points instead.*



Scales were:

Nowhere near enough time = 1

Not quite enough time = 2

The right amount of time = 3

Slightly more than enough time = 4

Plenty of time = 5

- FD4 has consistently been considered the most time-pressured, as mentioned frequently in candidates' comments scoring between 'nowhere near enough time' (1) and 'not quite enough time' (2).
- The biggest improvement has been for the FC2 exam, which in 2016 was ranked as low as FD4, but has improved a full point, from 'not quite enough time' to just under 'the right amount of time', as averaged across candidate scores.
- Satisfaction with the time allowed for FC3 dropped in 2019 compared with previous years. This was also reflected in the comments.
- Satisfaction has been broadly constant for FC4, FC5, FD1, FD2 and FD3, with respect to having sufficient time to complete the paper.

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### Combined score

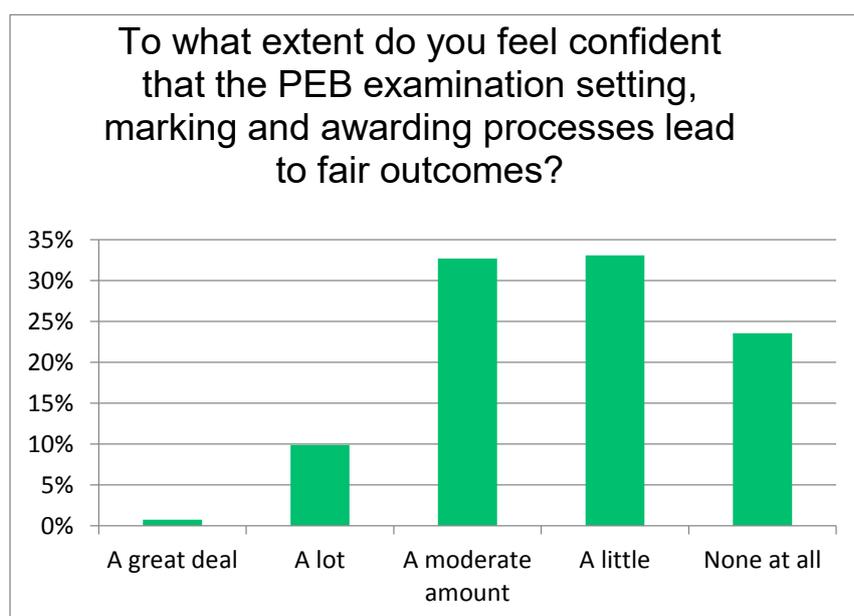
A weighted average was taken of the combined scores for each question – (opportunity to show knowledge / fairly represented learning outcomes / enough time) to see the overall position for 2019 compared with 2018.

Four papers showed a small improvement, but five papers showed a decline in satisfaction, with the biggest change being in FC2 and FD3.

Combined satisfaction score	2018	2019	Improved on 2018?
FC1 (P1)	3.4	3.6	0.2
FC2 (Law)	3.4	2.6	-0.8
FC3 (P5)	3.6	3.3	-0.2
FC4 (D&C)	2.97	2.94	0.03
FC5 (P7)	2.8	2.9	0.1
FD1 (P2)	3.1	2.8	-0.3
FD2 (P3)	3.2	2.9	-0.3
FD3 (P4)	3.3	2.7	-0.5
FD4 (P6)	2.3	2.4	0.1

### 8. Overall satisfaction

The survey included an overall question about confidence in the process: ***To what extent do you feel confident that the PEB examination setting, marking and awarding processes lead to fair outcomes?***



Overall 43% of candidates have at least a moderate amount of confidence in the process. The majority – 57% - have a little or no confidence at all. A weighted average gives an overall score of 2.3 (between ‘a little’ and a ‘moderate amount’), slightly reduced from 2.5 in 2018.

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In 2018, the reviewer performed additional analysis to incorporate candidate comments into an overall assessment of satisfaction, to highlight the proportion of candidates who are satisfied with the exam process or not. The rating took account of the tone and content of the candidates' comments, combined with their rating for the question about whether the exam process leads to fair outcomes. If the candidates voiced strong dissatisfaction or ranked 'not at all' they were considered to be **dissatisfied**. A candidate who gave a ranking of 'a moderate amount' but in the comments noted problems with the exams, was counted as **concerned** whereas if their comments said that the exams were not fit for purpose, or the whole process lacking in credibility, they were counted as **dissatisfied**. If the candidates said they were at least 'moderately' confident the process is fair, and had no concerns, they were considered to be **satisfied**.

On this rating, 29% of candidates were 'satisfied'. 35% were concerned 28% were dissatisfied. (8% were blank). On this basis, satisfaction levels were lower in 2019 than in 2018.

Totals	2018	2019
'Satisfied'	38%	29%
'Concerned'	25%	35%
'Dissatisfied'	19%	28%

#### 9. PEB responsiveness to feedback

The PEB reads all candidate feedback and demonstrates awareness of candidates' concerns by referencing candidate feedback in the examiners' reports. Candidates report frustration that they can see that the PEB is aware of candidate concerns but apparently not addressing them.

An example of this is the examiners' response to the recurring complaint about time pressure. Examiners appear to dismiss the concerns about the time constraint by saying that most candidates attempted all sections of the paper and therefore had enough time. Candidates challenge this response, saying that:

- They have attempted all parts of the paper, because they have been advised that they need to do so to get the best chance of passing, not because they genuinely had enough time
- Examiners complain of the quality/depth of the answers, not seeing this as an indication of the time pressure

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- They are never required in their jobs to work under such extreme time pressure, and so they may fail the exams due to inability to work at this speed, even though they are competent patent attorneys
- Consequently, the exams are unfair as they become more a test of speed of reading and writing rather than the skills of a patent attorney.

Comments from 2019 on this point are similar to previous years:

*In almost every examiner's report for FD4, there are comments to the effect of "Candidates complained about lack of time, but most candidates did all sections of the paper" and "Candidates are reminded not to write generic comments in the advice section". I would ask that examiners consider that these two comments are not unrelated! I think that the reason so many candidates write generic comments in the advice section is that they don't have enough time to carefully consider their conclusions and apply them to the situation in the paper, and are instead frantically writing anything they can think of in the last few minutes of the exam!*

*The examiners comments consistently show a lack of understanding of the situation from a candidate's perspective. The frequent comment that because most candidates attempt all parts of the exam means that amount of time provided shows a fundamental lack of understanding of how candidates approach the exam. Examination advice from multiple sources tells candidates they must attempt to answer each part of the paper or they stand no chance of passing. Candidates therefore approach the exam in a way that allows them to answer each part to some extent at the cost of answering any part in a robust and appropriate manner. This in turn leads to a large element of luck in passing the exam. With no time to check or really consider tricky points candidates must rapidly choose an answer and hope they went the right way.*

Several candidates recommended that addressing the time constraint would go a long way to addressing concerns about the exams.

#### **10. Transparency and appeals**

Many candidates would like to see better processes for internal moderation and appeal:

*However, based on the "How Qualifying Examinations are Marked" document from the PEB, I still don't feel confident that the exams lead to fair outcomes. I find it surprisingly that two failing marks from different examiners can differ by 10.5 points without triggering a review of the paper, even if one of those examiner's awards a paper 49%. If examiners can differ so differently in their assessment of a paper, I find it extremely difficult to what it is I'm supposed to do in this paper! It is also surprising that BOTH examiners have to award a mark of 47-49 for a marginal script review to*

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*take place. If one examiner thinks you are only 0.5 marks away from passing and awards 49%, but the other "only" awards 46.5%, there is no marginal review.*

*Transparency as to how examiners are appointed. I understand there is a review being carried out by CIPA. For the review to have any credibility, the reviewing committee must include upcoming, current, and recent candidates.*

#### 11. Summary

In summary, the major areas of concern in 2019 were:

- FC2: considered more difficult and obscure
- FD4: in the view of many candidates, improved from 2018 but still 'not fit for purpose', the incremental improvements have not been enough to address a fundamental problem with the exam
- Time pressure problems were not alleviated by increase in exam time because papers also increased in length
- Overall lack of confidence in the PEB to run a fair exam system, and frustration that candidate feedback is not being taken on board.