

# Patent Examination Board

## 2020 Examination Session – Response to Candidate Survey

### 1. Introduction

The background to the PEB examinations in 2020 and the preparation of this report is one of great change both externally and internally. There was, of course, the move to online examinations as a result of the pandemic whilst the long-awaited Mercer Review is expected to publish its findings in the near future.

These events will obviously have a profound effect on the PEB examinations in the future and so this response should be seen in this context. Indeed, some of the issues raised by candidates about the 2020 examination period have already been dealt with or been superseded by events. Most immediately, there will be a new proctored invigilation system used for the online examinations in 2021, whilst the outcome of the Mercer Review will inform how the suggestions for change made by candidates are dealt with in the medium term.

#### 1.1 The survey

As in previous years, there was a high response rate to the survey which was completed by 299 candidates. The PEB is very grateful for their engagement with the survey. In particular, there were a number of constructive comments about the implementation of the online examination system and changes that might be made to it the future. As far as possible, the PEB will be making refinements to the system which reflect these comments and will hopefully lead to an improved experience for candidates.

#### 1.2 General themes

The general tenor of the survey was more positive than it had been in previous years. In particular the survey report notes that “there was significant improvement in overall satisfaction in the fairness of the PEB exams”.

There was also a lot of praise for PEB for the manner in which the exams were moved online with one candidate commenting “I was extremely impressed by and grateful for the PEB's work in ensuring that this year's exams took place, despite all the ongoing disruption. The systems worked well and I think could form a blueprint for the exam logistics going forward. Thank you to all involved.” The views expressed by this candidate were representative of the views of candidates more generally with respect to both the arrangements for this year and how the exams might be dealt with more generally in the future.

Nonetheless, candidates did raise issues arising out of the online assessments. These covered matters such as:

- how assessments might be dealt with in the future
- communication about the system
- trialling of the assessment system
- timings and breaks
- arrangements for invigilation and security of the assessment

- the format of the assessment.

At the same time, there were a number of ongoing concerns that had been referred to in previous surveys. In particular, the report specifically refers to the following areas:

- the demand for memorising amounts of material
- the time pressure / length of exams
- inconsistency in marking from examiners
- fairness of the process and relevance of the exams in assessing skills needed to be a competent patent attorney
- candidates would appreciate getting their results more quickly.

This response will cover all of these issues, as far as is possible at the time of the writing. It will also deal with the comments raised by candidates about individual assessments. These are also covered in the Examiners' Reports which should be read in conjunction with this response.

## **2. Time**

There were a number of matters that arose with respect to the time allowed for the exams.

A number of candidates raised the time pressure that they were under during the exams. This was particularly the case for FD4, although there was the occasional reference to this being an issue in other Final Diploma papers. Some candidates suggested that this undermined the credibility of the assessments as it meant that the exams did not replicate the sort of skills required in practice.

There was, however, some indication that there had been improvement on previous years both in the format of the FD4 assessment and the fact that the assessments as a whole were online. Several candidates commented that the FD4 paper was an improvement on previous years. A number of candidates also indicated that time pressures were alleviated by the ability to type answers. Indeed, the Examiner's Report for FD4 commented that candidates had made good use of the cut and paste facility, although it also warned against pasting in points without relating them to the specific issue that was being addressed.

A number of candidates made suggestions for improving the format of the papers to help deal with the time pressures. These included splitting them into more than one part, extending the time to take the paper, releasing fact patterns in advance and indeed running the assessment as a coursework. In liaison with the examiners, the PEB does keep the format of papers under constant review. Any major changes will now, however, have to await the outcome of the Mercer Review although the views expressed by candidates will help contribute to the PEB's consideration of the Review.

### **2.1 Timing in the online exams**

Some issues relating to timing did arise out of the switch to online examinations. A number of candidates commented on the need to log into the system an hour before the exam during which time they were under exam conditions. Most candidates accepted that this was necessary for the purpose of security checks but suggested that candidates could be allowed to either read the paper or review their notes during this time. The style of the

security checks will change under the system that the PEB is using for the 2021 examinations and so this issue might not arise in the future.

There was also some confusion about the breaks that were allowed during the assessment. In particular, some candidates felt that there was a lack of clarity about the screen breaks and how they could be used. There was also a suggestion that “There was too much time given for screen breaks, printing, scanning, and uploading” although the survey found that “97% of the candidates agree and partly agree that the time allowed for screen breaks was about right.”

Nonetheless, this is an issue that the PEB is actively considering as part of the arrangements for examinations next year. In particular, PEB is investigating ways of separating the examination time from the upload time and ensuring all candidates stop working on their answers at the same time.

With respect to their own time management, some candidates did ask if early warning could be given of the ending of the examination. This was, however, something that candidates were expected to manage themselves. The PEBX system had a clock available on it, whilst candidates were also advised to have a traditional clock on their desk. PEB is working on development of a means of warning candidates that they should stop inputting their answers and upload their Answer documents.

### **3. Communication**

There were some comments from candidates about the communication from the PEB in advance of the assessment which some candidates felt was piecemeal and sometimes contradictory. As a whole though, candidates accepted that this was entirely understandable in the circumstances given the short space of time that the PEB had to put the system into place. Indeed, the survey indicated that 85% of candidates “rated the ‘Essential information for candidates’, to be useful or very useful, followed closely by the Frequently Asked Questions which 76% of the candidates found to be either useful or very useful.”

For the 2021 assessments, candidates are being provided with information about how the examinations will be conducted as part of the registration process. It is hoped that the information provided for candidates should also be subject to less change as the PEB is aiming to finalise the system for the examinations at an earlier stage.

### **4. Arrangements for invigilation and security of the system**

Some concerns were raised by candidates about the invigilation. This had two main elements to it. Firstly, there was some inconsistency in the approach taken by invigilators and secondly, there was a lack of responsiveness to questions raised through the chat facility. With respect to the inconsistency, this manifested itself in various ways with there being different approaches to security checks, use of time before the examination started and the muting of microphones.

In accordance with normal practice, the PEB provided training for all invigilators and Designated Contacts within firms and supplied them with a detailed set of written instructions as to how to invigilate the examinations. This seems to have been largely successful with 95% of candidates indicating the preparedness and efficiency of invigilators were very good.

The PEB is, however, conscious of the concerns raised by candidates which will hopefully be avoided under the proctoring system which the PEB is planning to use for the 2021 examinations.

On a related issue, several candidates raised concerns about the security of the system. In particular, candidates wanted stricter and more in-depth security checks and greater control over candidates when leaving the room. The PEB is naturally concerned about ensuring the security of the examinations and indeed investigated suspected malpractice for a number of candidates this year, although none of these investigations resulted in action being taken. In 2021, the PEB will be using a proctoring system which will monitor candidates' movements more strictly.

Finally, there were some candidates who expressed concerns about being able to see other candidates with some finding this off putting. In addition, one candidate suggested that there might be GDPR implications arising from this. The proctoring system which the PEB is planning to employ in 2021 will not run in the same way as the Zoom system and so this issue should not arise in the future.

## **5. How assessments might be dealt with in the future**

Candidates were overwhelmingly in favour of the examinations being carried out online in the future with the survey showing that over 95% were in favour of this. Indeed, in the survey no candidates argued in favour of a return to the old system. Candidates mentioned a number of advantages to taking exams online including less need to travel and the arrangements being more like workplace practice. As noted above, this also helped to alleviate the time pressures within the exams, whilst candidates also commented how they felt more comfortable completing their examinations in a familiar environment. The 2021 exams will therefore continue to be taken by candidates online, albeit with a new proctored invigilation system.

Some candidates did question whether the move to online assessments would mean a reduction in fees given that there would no longer be costs such as hiring venues. Whilst the PEB has not increased the fees for 2021, the development and provision of an online system does involve quite large costs in itself, particularly as the PEB has sought to improve the system. In light of this, there will not be a reduction in examination fees.

## **6. Trialling of the assessment system**

Some candidates did comment on the trialling of the system for the assessment. These comments focussed on the Zoom part of the exam including logging in, the use of break out rooms and the security check. These were, however, relatively minor problems which did not seem to unduly affect the candidates' performance.

It was notable that there were no criticisms of the trial of the PEBX portal. The PEB is planning to carry out a similar trial of the system to be used for the 2021 examinations and candidates will be sent information about this at the appropriate time.

## **7. Format of the assessment**

Several candidates made suggestions as to improvements that could be made in the format of the assessment – particularly for FD4. Specifically, there was a request to provide an editable version of the claims available, preferably incorporated into the Answer document. This is something that will be provided in 2021. Similarly, a candidate asked if the PEB could provide a means for candidates to include sketches in their answers. This is something that will be actively considered for 2021.

More generally, there were a number of suggestions about mechanisms for accessing or uploading the papers, which amongst other matters would make it easier for candidates to read their own script online. Again, the PEB is looking to make improvements to the Answer documents for 2021.

## **8. The demand for memorising amounts of material**

One of the recurring issues for candidates was the need for them to memorise large amounts of material in order to be successful in the assessments, most particularly at Foundation level. Candidates felt that this did not reflect the manner in which matters would be dealt with in practice with one candidate indicating that “in my professional career failure to check a deadline calculation against the act/rules would seem negligent”. In addition, it was felt that “questions that enable analysis and opinion of situations would be more akin to the real world.”

This has been discussed by both the PEB and amongst the examiners, who in 2021 are seeking to set questions which involve greater levels of application of knowledge than has previously been the case. It should, however, be noted that it is not unusual in assessments for other professions for there to be questions which are essentially knowledge based. In addition, the Examiners’ Reports tend to show that candidates perform better on the Part A questions which test candidates’ ability to accurately recount the law.

A number of candidates suggested that one way to deal with this issue is to have open book assessments. It was also argued that open book assessments would deal with some of the concerns about the security of the assessment (see section 4 above). This is a matter that has been discussed within the PEB but again is a decision that will be affected by the outcome of the Mercer Review and so will not be implemented for 2021.

## **9. Fairness of the process and relevance of the exams in assessing skills needed to be a competent patent attorney**

The criticisms discussed in the section above are an element of a more general concern amongst candidates that the exams are not an adequate test of fitness to practice. This concern seems to be largely focussed on the time pressures (see section 2) and the need to simply regurgitate large amounts of the law (see section 8). There were also some specific concerns about the subject matter of the examinations, particularly FD4, which was considered to be too “mechanical”. It was felt that this made the exam inaccessible to candidates from a “Biochemistry/Chemistry/Pharma background”.

The whole question of the nature of the exams is, of course, central to the Mercer Review and therefore there will be no fundamental change to the assessment process until the

outcome of the review is known. It should, however, be noted that the examinations are set and marked by experienced members of the profession who are drawn from a variety of disciplines and practice contexts.

This latter point is reflected in the comment from the FD4 Examiner's Report which noted that: "While the subject matter again falls in the mechanical domain, examiners with backgrounds in chemistry and biotechnology were involved in setting the paper to ensure that the technical subject matter would be accessible to all candidates. The field of technology in question is mature and stable".

## **10. Inconsistency in marking from examiners**

It is difficult to be precise about the nature of the concerns that candidates have with respect to the marking given the lack of concrete examples that are given on this point. It is, however, worth giving an overview of the marking process to demonstrate the care that is taken to ensure that all candidates are treated fairly.

Firstly, before they start marking any papers examiners will be trained in the process whilst each examiner is issued with Marking and Awarding instructions each year.

After an assessment has been sat, examiners will be asked to mark a number of common papers that are selected by either the Chief Examiner (for Foundation papers) or the relevant Principal Examiner (for Finals papers). They will also mark extra papers from their own allocation.

All the examiners for the specific paper will then attend a standardisation meeting which will also be attended by a patent attorney and lay member from the PEB Governance Board. The Chief Examiner will attend all such meetings for the Foundation papers.

At the standardisation meeting, the mark scheme will be discussed in the light of the papers that the examiners have marked. This allows a common approach to be adopted to the marking of the papers, with the Principal Examiner making any necessary amendments to the mark scheme.

The examiners will then mark their allocation of scripts. For Foundation papers each script will be marked by one examiner whilst all Finals papers are marked by two examiners. This process can give rise to differences between markers and so there is a detailed procedure for reconciling the marks where there is such a difference. Specific attention is also paid to scripts that are considered to be borderline fails (i.e. those within the 47 -49 bracket).

Finally, there are two awarding meetings; one for Foundation and one for Finals papers. These are attended by all the examiners together with a patent attorney and lay member from the PEB Governance Board. This meeting reviews the marking process as a whole, including consideration of a statistical analysis of the results, with the aim of ensuring that all candidates receive the appropriate result.

It should be noted that this year the External Examiner attended the Foundation awarding meeting. In 2021, the External Examiner will also have responsibility for the Finals papers and so will attend both awarding meetings.

There are therefore a number of measures taken to ensure that candidates are treated consistently and fairly. The effectiveness of this process is borne out by the report from the External Examiner for the Foundation Certificate which indicates that “PEB currently has a sound set of procedures and principles, and a robust process for review and standardisation of examination marks.”

In addition, in December 2020, the Quality Assurance Agency (QAA) carried out a review of the Policies, Procedures and Processes of the PEB. One of the areas of good practice that the QAA identified in its review was “The robust quality assurance arrangements adopted for examination paper setting and marking that have continued to be refined, taking account of feedback from examiners following each examination”

The PEB is not, however, complacent about the process and will make further improvements to these arrangements where it can.

## **11. Candidates would appreciate getting their results more quickly**

Whilst this is a continuing concern for some candidates it attracted a relatively small number of comments in the candidate survey.

It is, however, fair to say that some candidates expressed concern that the release of the results coincided with the EQE exams. This was unavoidable given the earlier cancellation of the EQE exams. This should not be an issue in 2021.

In any event, as can be seen from section 10, there are detailed and therefore time-consuming procedures for ensuring that candidates are treated fairly. The examiners are also busy practitioners and so have to be given a reasonable length of time to complete the marking properly.

## **12. Comments about specific papers**

### **12.1 Foundations papers**

There were no comments of note relating to the Foundations papers. In their report, the External Examiner for these papers noted both that “The examinations and syllabus are generally appropriate to the Certificate aims” and that the individual papers were “at a reasonably consistent level, and one which is generally appropriate to the Foundation Certificate.” This would tend to suggest that the Foundations papers were fit for purpose.

### **12.2 FD1**

A few candidates commented on the vague and open-ended nature of the questions this year. Whilst this is something that the examiner will take into account, it is worth noting that the Finals papers are set at Masters level and thus candidates should be able to make sound judgements with incomplete information and deal with ambiguity effectively.

### **12.3 FD2**

Again, there were relatively few comments on FD2 although one candidate noted that it “seemed a significant improvement on 2019”. Some concerns were, however, expressed about the length of the paper and in particular the client letter.

This specific point was addressed in the Examiner's Report which "acknowledged that this year's paper was longer than is typical, but the amount of reading did not seem to disconcert candidates unduly." Indeed, there was a rise in the pass rate for this paper.

#### **12.4 FD3**

In the survey there were only four comments for FD3. These pointed to time pressures and the length of the paper. There was, however, nothing of particular substance that needs to be dealt with in this response.

#### **12.5 FD4**

As in previous years, this was the paper which attracted the most comment and criticism. Whilst some candidates did praise the paper for being an improvement on previous years, there were nonetheless some trenchant criticisms of the paper. These focussed on two main areas: time pressures and the inaccessibility of the subject matter for those who are not from a mechanical background. These have both been commented on above – see sections 2 and 9 respectively.

Some candidates did indicate that the examination as a whole was not fit for purpose. Again, the nature of the assessments may well be dealt with in the Mercer Review and so any changes to FD4 will take place once consideration of the Review has been concluded.

### **13. Conclusion**

The PEB is very grateful for the constructive and thoughtful way in which candidates engaged with the survey. In particular, it has been useful to have feedback from candidates about their experience of online assessments. This will help to shape the manner in which the examinations are conducted in 2021 and going forward.

The more general comments that have been made about the nature and content of the assessments will also help to inform the manner in which the PEB approaches the examinations in future. This is, however, contingent on the conclusions of the Mercer Review and the decisions that flow from it. The PEB will, however, take into account the comments from the candidates when considering the Mercer Review and how to implement the decisions that arise from it.