Patent
Examination
Board

PEB Qualifying Examinations
Consultation on PEB Final Diploma Proposed Changes

Survey Responses, September 2024

1. Summary

As part of its response to both the Mercer recommendations and IPReg's Requirements, and following good practice in qualifications and assessment, the Patent Examination Board (PEB) has undertaken a full review of the four Final Diploma (FD) syllabi and examinations. The PEB ran a survey to seek feedback from candidates and employers on the proposed changes to the Final Diploma examinations, which is summarised in this report.

Eighty-one respondents completed an online survey regarding the proposed changes, and a further three firms responded by email with recommendations consolidated from consultation with their employees. The respondents represented former and current examination candidates, examiners and tutors, as well as a diversity advisor.

Key Findings:

- Improvements in streamlining content to avoid duplication and reduce the time pressure were welcomed by most candidates
- For FD1, there was most concern about the removal of designs, as an essential area for patent attorneys to be competent and tested. ***"Designs are not similar to trademarks or copyright, where there are other professions that specialise in them - if patent attorneys are not equipped to handle them, then no-one else really is."***
- Respondents were largely satisfied with FD2 and FD3 already, and feedback on proposed improvements to the exams reflects this.
- Many respondents felt that the use of synoptic marking was good in theory, but were concerned that it would be difficult in practice to make this fair and transparent: ***"Great care is going to be required to ensure that candidates are treated fairly and that the required standard is very clearly communicated."***
- There were mixed opinions about the proposed changes to the FD4 examination. Some felt that the changes were a move in the right direction towards an exam more reflective of everyday practice and more manageable for candidates. Some felt the exam is still "fundamentally broken" and that it still needs a more radical overhaul. Others felt that the changes constitute a "dumbing down" that will be harmful for the profession.
- Some respondents felt that the advice section should be kept separate in FD4.
- Opinions were divided on the reduction of time for FD4 and the pre-release of material. The move to make the exam more manageable for candidates was welcomed by most (but not all) respondents, but respondents were not not confident that the PEB would suitably adjust the content for FD4 to make it manageable in the shorter exam time, and there were also concerns that the benefits of pre-release

would be cancelled out by making the content more difficult. Several respondents raised concerns that this would advantage candidates from larger firms who may get more support to prepare.

- Many respondents asked for the PEB to consider making the exams open book, and some recommended that the PEB draw on experience of the EQEs.
- Throughout the survey, respondents said there was not enough information to comment, and they requested that more detailed guidance, papers and mark schemes be released as soon as possible to enable further consultation.
- Concerns were raised that the process is being rushed through, and that there must be a sufficient transition and preparation period so that candidates are not disadvantaged, otherwise respondents felt that several of the proposed changes risked lowering pass rates
- Revisions don't go far enough to meet the needs of candidates with disabilities, and some respondents felt the proposed changes could further disadvantage people with additional needs.

2. Background to the review

In 2021, CIPA published the report of the Mercer Review of patent attorney education, training and assessment. At that period, unfortunately, the COVID pandemic delayed PEB's planned work on its own review of the Qualifying Examinations. In 2023, IPReg, the Intellectual Property Regulator, completed its re-accreditation of the PEB Final Diploma. The Final Diploma was re-accredited subject to PEB implementing nineteen Requirements and two Recommendations.

As part of its response to both the Mercer recommendations and IPReg's Requirements, and following good practice in qualifications and assessment, PEB has undertaken a full review of the four Final Diploma syllabi and examinations. The review committee was led by Professor Carl Stychin and included practising patent attorneys, external examiners, chief examiners, principal examiners, PEB Governance Board lay and patent attorney members, assessment specialists and the PEB executive.

The PEB sought feedback from candidates and employers on the proposed changes to the Final Diploma examinations which is summarised in this report.

In considering possible options for the revised syllabi and examinations, the review committees sought to:

- take into account feedback from stakeholders including candidates, the profession and employers
- support the high standards of the UK patent attorney profession;
- reflect changes in professional patent attorney practice since the last review of the FD examinations in 2014;
- enhance equality of access to assessment, including improving the accessibility of the examinations for candidates who have special requirements or who enter the profession from non-traditional routes;
- continue to provide assessments that are relevant and rigorous whilst reflecting current best practice in assessment.

The planned date for the first FD examinations in the revised format is the October 2025 session. To allow 2025 candidates sufficient time to prepare, final versions of the syllabi and specimen assessment materials will be published on the PEB website in autumn 2024. The final session of the FD examinations in the current format will, therefore, be October 2024.

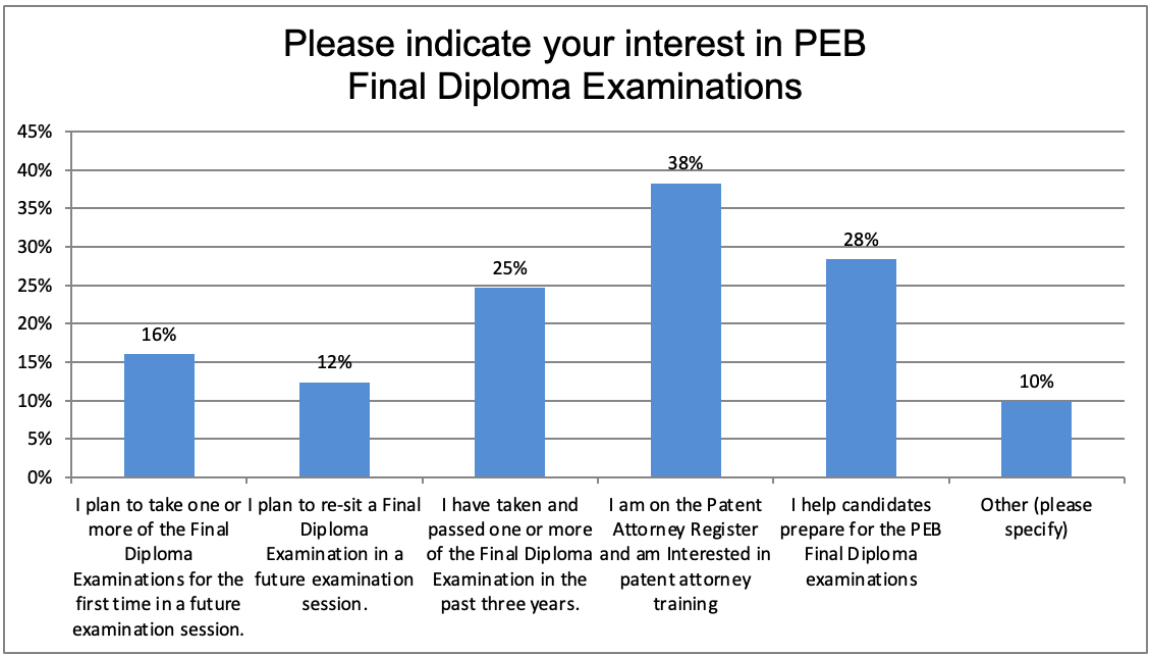
The questions for this survey were largely open questions enabling respondents to comment freely on any aspect relating to the proposed changes for each exam. The comments were analysed and grouped by theme. Where an individual's comment related to different themes, the comment has been split and included in the relevant sections. Selected comments are included in this summary report as examples to represent points made by multiple respondents. The full candidate feedback grouped by themes is also submitted to the PEB as a separate report so that all feedback is read.

3. Survey respondents

3.1. Respondents' involvement in the Final Diploma exams

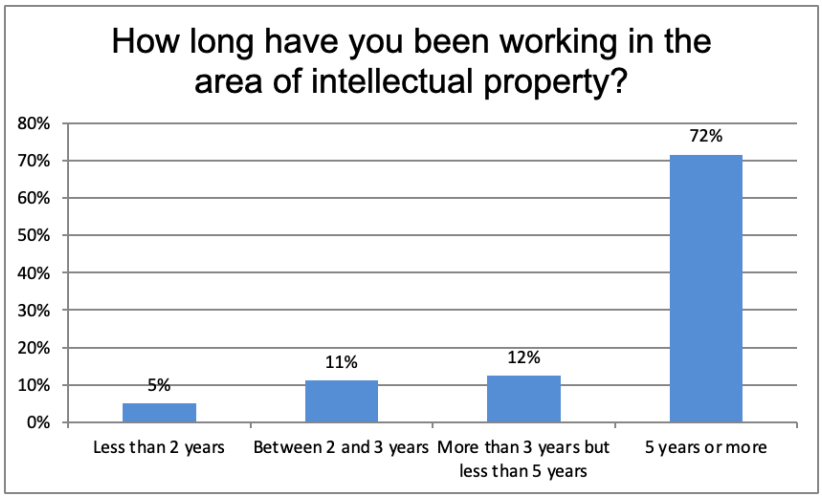
Eighty one (81) respondents completed an online survey regarding the proposed changes, and a further three firms responded by email with recommendations consolidated from consultation with their employees.

53% of respondents were previous or future candidates for the examinations. 38% were registered patent attorneys interested in patent attorney training, and 28% of respondents help candidates prepare for the Final Diploma.



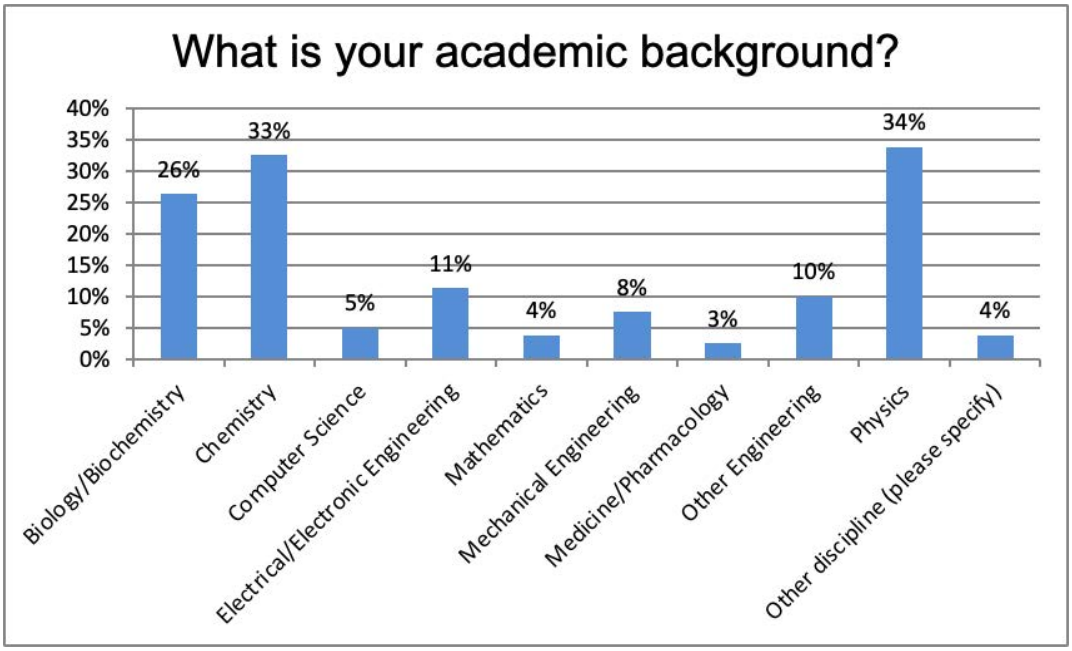
Those answering "other" included FD examiners, candidates who are also tutors, and those responding on behalf of a firm, drawing together responses from a firm-wide consultation.

3.2. Respondents' level of experience in intellectual property



72% of respondents had at least five years of experience in intellectual property.

3.3.Respondents' academic background

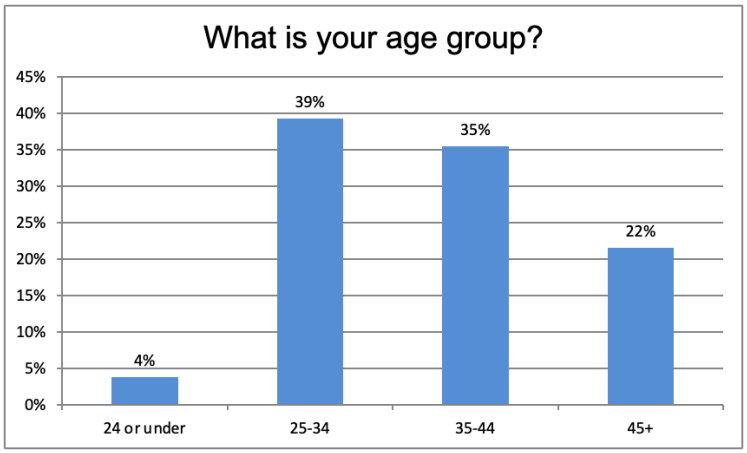


Most respondents had a background in Physics (34%), Chemistry (33%) or Biology / Biochemistry (26%)

Other backgrounds detailed in the comments were:

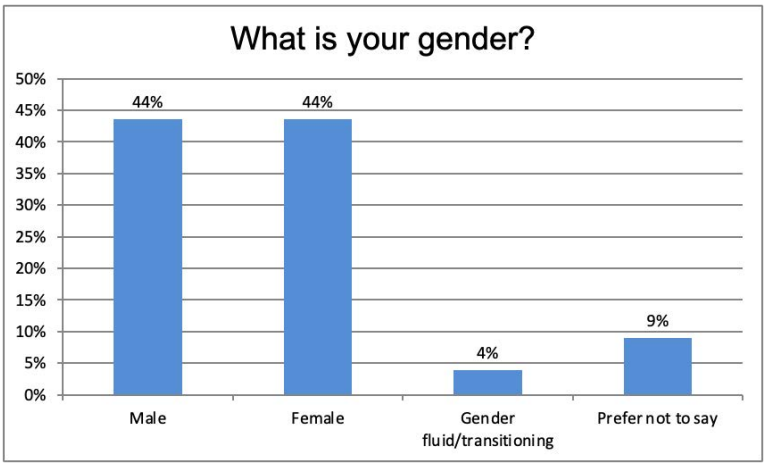
- Firm wide, representing patent attorneys and trainees from all the listed technical fields
- Education
- Materials Science
- Disability

3.4. Respondents' personal characteristics

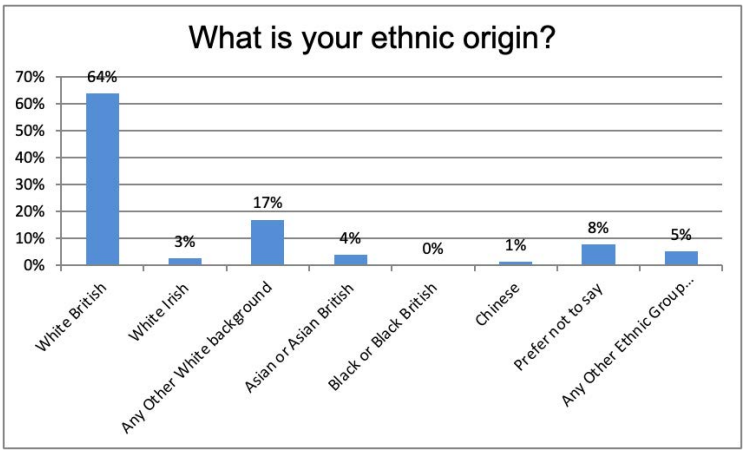


Most respondents were aged 25 - 34 (39%) followed by 35% aged 35 - 44.

(Note that this represents individuals, not respondents completing the survey on behalf of a firm. Indeed, one firm noted that it would be good in future to have a questionnaire tailored for firms as well as individuals.)



Respondents were evenly balanced between male (44%) and female (44%).

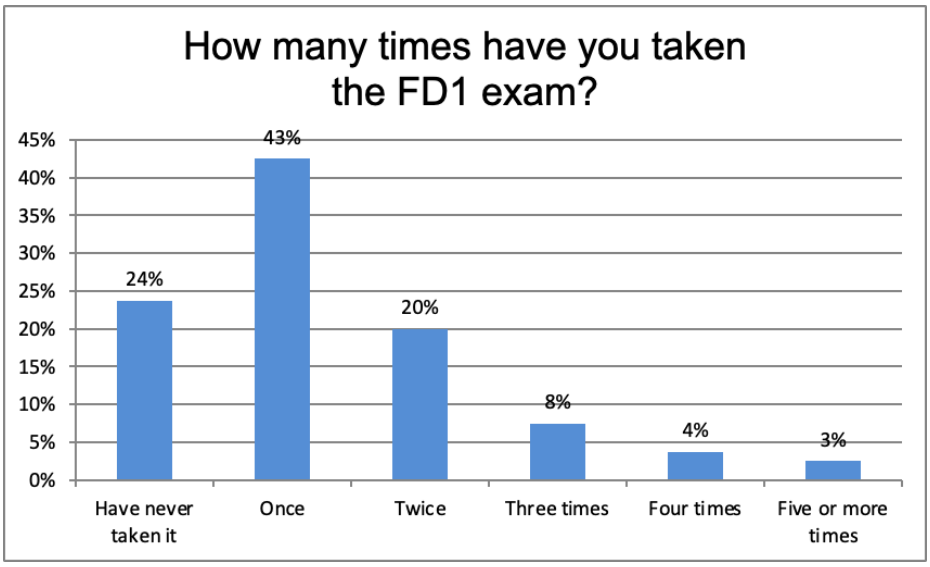


The majority were White British or other white (74%) and 4% were Asian or Asian British. Under “other” two respondents were mixed White / Asian, one was mixed White British and Chinese, and one was mixed Black and White British.

4. FD1 Exam

4.1. Respondents' experience with the FD1 exam

76% of candidates had previously taken the FD1 exam, most of them once (43% of all respondents).



4.2. Feedback on the proposed changes to the FD1 syllabus

4.2.1. Overall feedback

Overall, many candidates supported the changes, mentioning reasons of:

- Better alignment with everyday practice and testing core competence
- Reduced requirement for memorisation
- More streamlined / manageable syllabus

Representative comments include:

"Although we cannot comment in detail without seeing the new syllabus, we generally support any move towards a clearer and more streamlined syllabus, a better alignment with the requirements of current professional practice, and better supporting materials including clear, comprehensive and accurate reading lists. We believe these measures should reduce stress for all candidates when both preparing for and sitting exams, and thus allow them to focus on demonstrating their true competence."

Many survey respondents also commented on the process, saying that they would need more information on the specific content in order to comment further, and that they hope there will be a suitable transition period and support so that candidates are not disadvantaged in preparing for the new exam, making pass rates worse.

4.2.2. Proposed inclusion of Ethics in FD1

Respondents were largely in support of the idea of including ethics, but would need more information about what would be covered, and also gave suggestions about how ethics might be incorporated.

“I am pleased to see ethics being introduced into the syllabus at long last. I have encountered on many occasions patent attorneys who are otherwise wholly proficient being flummoxed by ethical issues when they occur. A firm and mandatory grounding in ethics and how to handle issues is a good step.”

“We urge the PEB to include EDI (equity, diversity and inclusion)-related issues, for example the avoidance of discrimination, in the relevant part of the FD1 syllabus.”

“Ethics is a large subject and much of it is not related to practice as an attorney in relation to a client. Thus, I consider that in this respect, the syllabus should limit the scope of ethics to matters which directly impinge on the attorney-client relationship.”

“Introducing ethics into part A seems duplicative of assessment of IPReg code of conduct in FC2. That said, FD1 genuinely seems the more appropriate point to test ethics, in the context of a practice question.”

4.2.3. Opposition to the removal of designs from FD1

The majority of comments on FD1 related to the proposed removal of designs from the syllabus. Opinions were divided, but overall more respondents did not support the removal of designs from FD1. The survey asked for comments in response to the proposed changes to FD1 and did not explicitly ask respondents to say if they agree or disagree with this specific change concerning designs. Therefore data is not available for all respondents, but is only drawn from the free comments section where respondents opted to mention it. However, of those who mentioned it, 35 respondents said they opposed the removal of designs from FD1, and 16 supported the proposal.

Those who supported the removal of designs from FD1 welcomed it as an update to make the course more relevant and streamlined, for example:

“I think the move away from Designs and JP patent law, and onto CN, EP and US patent law is positive, and more reflective of the work that most patent attorneys do in practice.”

However, those who opposed the change, said that designs are relevant and important to patent attorney practice, and were concerned that if designs were not tested in FD1, this would leave a significant gap in candidates’ professional competence. Comments include:

“I am not entirely comfortable with removing designs from the syllabus. They seem to be an increasing part of practice for my firm and are not trivial.”

“Patent attorneys are required to advise clients on IP matters, including when patents are not the most appropriate choice and a design registration is. There is also no separate UK Design Attorney qualification and patent attorneys routinely file UK registered designs. UK registered and registered designs should remain part of the syllabus to ensure standards and expertise is maintained.”

“Current professional practice, in my opinion, requires a breadth of knowledge across patents, designs, trademarks and copyright. Removal of design testing in an advice paper is a retrograde step. Too often I see junior attorneys failing to advise clients on design right (or trademarks or copyright) because there is a failure in 'joined up thinking'.”

Where firms had aggregated feedback from across the firm, they reported similarly mixed views:

“There are mixed views on the removal of Designs from the FD1 syllabus. It is a change that has been welcomed by many but others have expressed concern that, even if not working directly in the area of Designs (which is the case for by far the majority of candidates here), a qualified patent attorney still needs to know about and have a basic understanding of this topic so that they can at least recognise when a client has IP that would be best protected using a Design.”

4.2.4. Overall support for the removal of Japanese law

Several respondents commented that they supported the removal of Japanese law from the syllabus, for better alignment with everyday practice. For example:

“The decision to remove Japanese law from the exam is excellent. In reality, any relevant actions would be checked via a Japanese attorney. While having a general appreciation for the law in other countries is useful, this would be checked on a case by case basis depending on client needs and further, is examined during FC3.”

Some respondents said that for the same reasons, they were not sure why Chinese law had been substituted. A smaller number of respondents recommended retaining some knowledge of Japanese law:

“We would advocate to keep the requirement for a higher-level understanding of Japanese patent law in addition to the other jurisdictions listed, as Japan remains a major filing destination for UK companies.”

4.2.5. PEB should still consider open book exams

Under this question concerning the FD1 exam and later survey questions asking for general comments on the PEB qualifying exams, many respondents mentioned that they would prefer that the exams be open book, so that the exam tests areas of core competence rather than memorisation. Indicative comments include:

“The Mercer Review raised the question of whether the FD examinations should be open book examinations. No conclusion was reached but the topic is frequently raised. My preference is for the candidates to be able to bring into the examination any book from a list prescribed by the PEB such that the candidates can check factual legal provisions but which does not allow them to bring in draft answers or other pre-prepared material. Such a prescribed list approach would not require any change to the examinations themselves as the allowed materials would not affect the way in which the required skills are assessed.”

4.3. Feedback on new structure of FD1

Overall more respondents said they supported the proposed new structure, saying that they felt it will enable candidates to give each question more considered thought, and is a better test of professional competence. Comments include:

“Agree. Scenario-based questions can better assess a candidate's understanding of concepts and how to apply it in real-life practice, compared to the current Part A questions which are rote learning and regurgitation.”

“A move to scenario-based questions seems like a sensible move. I understand that there has always been a push for application, rather than recitation, of the law, and this format should allow for candidates to showcase their practical knowledge better.”

Those who opposed the new structure felt there was a value in having some shorter questions for an easier start for candidates at the outset of the exam and then the longer scenario-based questions for Part B.

“I'm not sure about the change to 25% part A and 75% part B. Part A questions are, in general, better structured than part B questions. It's also common in practice for clients to have quick questions about one or two topics, especially deadlines, fees, extensions etc. I think a better structure to reflect practice would be 50% each with two non optional part B questions.”

“If the intention is to move towards a more “Part B”-heavy mark exam, then the complexity of Part B questions should be reduced and/or the questions should be more detailed so as to reduce ambiguities – otherwise, the proposed changes would seem likely to introduce new time pressures to FD1. We are concerned that the changes proposed for FD1 place too great a weight in favour of the longer scenario questions. The proposed transition would appear to negatively impact candidates who have been preparing for FD1 in its current form in the course of previous examination seasons/tutorials. We feel that appropriately formulated shorter-form questions can nevertheless test an attorney’s profession skills, and longer form, scenarios-based answers are not the only way to do this.”

Respondents were also concerned about how examiners would be able to mark the paper in the new format, given that candidates have typically scored lower on the Part B questions. With all the questions compulsory and more marks at stake in each part, there is a risk of candidates getting low scores if they take a wrong path, or if there is not a good spread of topics examined.

“I think the move to longer answer questions puts an onus on the question setters to ensure that each question tests multiple topics. It serves no purpose to have candidates fail because they lacked knowledge of an esoteric issue on which an entire 25 mark question has been based.”

“It is also unclear how the examiners will deal with answers which concentrate on issues which are not those on which the examiners wished the candidates to concentrate but which nonetheless provide a reasonable answer to the situation with which the candidate is faced. It would be very useful if the PEB would give guidance on this.”

Several respondents alluded to an element of luck or unpredictability in where marks are awarded in the longer answer questions. With a greater part of the exam now using longer answer questions, respondents said the change in structure combined with the subjectivity of synoptic marking was “a recipe for a real crash in grades.”

“The challenge all along has been how the questions are framed making it difficult for some candidates to effectively pick up what scores marks unlike the European exams which are much more straightforward. I can’t see how changing the format but not changing the way by which the questions are asked and marked will be beneficial alone. The changes to format, marking style and framing of questions should all happen at the same time.”

Twenty three respondents made comments in support of making all questions obligatory, saying that this seemed sensible and would also save time. Eight respondents did not support the change and wanted more choice and flexibility for candidates to answer in their strongest areas. Others cautioned that it would be important to make sure the questions were fair for a range of academic backgrounds.

4.4. FD1: Use of Synoptic Marking

Many respondents were positive about the use of synoptic marking, commenting that this was a welcome and logical change that resolved challenges with the exam in previous years where the mark schemes were too rigid, and good answers not in the mark scheme were not rewarded. Candidates had reported that it felt like a lottery trying to anticipate what is in the mind of the examiners to gain points.

“I think this is a good change, as it encourages providing a good legal answer rather than trying to hit specific marking points.”

“Candidates making valid points unforeseen by the mark scheme creators should be rewarded, and a synoptic approach should aid this.”

While many believed it was a good idea in theory, respondents were concerned about how the system will be implemented fairly and transparently in practice, and would like to see more information from CIPA about how the challenges of synoptic marking will be addressed. Respondents noted the need for setting clear standards, “extensive” preparation

materials for candidates, appropriate training for markers is in place as well as a “more substantial” appeals process than is currently in place.

“So long as the assessment regimes are underpinned by clear and objective criteria for the competencies being assessed, and appropriate training for both examiners and question setters, they should help provide a fairer, more inclusive and also more robust gateway to qualification as a UK registered patent attorney.”

Those who opposed the idea felt that the exams are already opaque enough and that a more synoptic style marking is a move in the wrong direction, making the marking too subjective to individual examiners’ opinions, and making it difficult for candidates to prepare.

“The "synoptic" approach may be particularly difficult to use for this paper, as it will extend across six completely different compulsory questions with the risk that someone will be considered "unsafe" based on a weak answer in an area for which they have negligible practical experience.”

“I do not agree with the proposed changes. I think it introduces ambiguity and potential unfairness, e.g. where markers may subconsciously promote a specific "style" they are familiar with. This would unfairly penalise those who do not train in organisations/firms linked to examiners.”

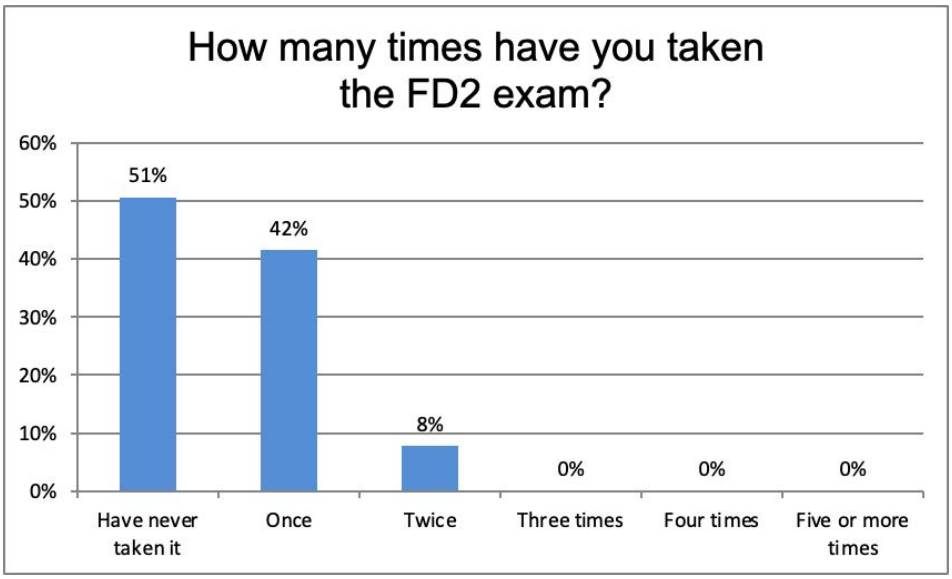
“In the EQE drafting papers, novel and inventive claims that are not unduly limiting are rewarded. In UK exams, such claims often result in a fail being awarded if they do not follow the same train of thought as the examiner. It would be worth instituting an appeals process (or perhaps consulting someone who carries out mechanical drafting in their day job) to avoid penalising candidates who simply come to different solutions than the one favoured by the examiners.”

One respondent also suggested that penalties should be introduced for bad advice:

“I believe it is important to have some form of negative marking/penalty for statements which prejudice a client’s position (not currently featured in the marking system) and I feel that overall moderation of marks (to a modest extent) can help ensure a more consistent pass standard between years. Personally, I feel that candidates can currently do a lot wrong and still pass, so I strongly feel the pass standard should not reduce.”

5. FD2 Exam

5.1. Respondents' experience with the FD2 exam



5.2. Feedback on FD2 exam

There were relatively few comments on the proposed changes to the FD2 exam. This exam has attracted less criticism from candidates in previous years, and fewer changes were proposed. Many of the comments relating to this exam expressed the sentiment that the exam was already fine and not in need of major reform, and therefore the few proposed modifications were fine.

The majority of respondents supported the removal of the requirement to annotate diagrams, saying that this would save candidates a lot of time in the exam, from a task that did not test key professional skills. Twenty three individual respondents, plus the aggregated feedback at the firm level said they support this change. Five respondents opposed the change, commenting that annotation is an important skill that should still be tested.

As for the FD1 exam, many candidates supported the use of a synoptic marking style, on the condition that it is transparent and fair. Specific suggestions relating to synoptic marking for the FD2 paper include:

"There are certain things that should not occur, eg a clearly non-novel claim 1, that should elicit a fail. Secondly, an indication of what is good or poor is helpful, so marks targeted on specific features is useful. A more synoptic approach to marking provides for a flexible approach in determining pass or fail but with less rigour and objective justification."

"The drafting paper does not provide an opportunity for candidates to explain why they took their approach. Absent this, a synoptic mark scheme will focus on one "correct" answer. This does candidates a disservice. Marks should be awarded for a response letter to client explaining the route taken and advise on the filing strategy. This would better fit the real world job."

“Again, the mark scheme approach to a paper such as this is poorly implemented. In my view, this paper would give a far better indication of drafting ability if it had a written component and an oral component so that a candidate could justify their claim 1. Drafting, more than any of the other exams, can provide answers in many different forms, and an answer currently only attracts marks if it hits the mark scheme.”

Some respondents suggested that adding client notes would be a valuable addition to show the thought process behind the drafting:

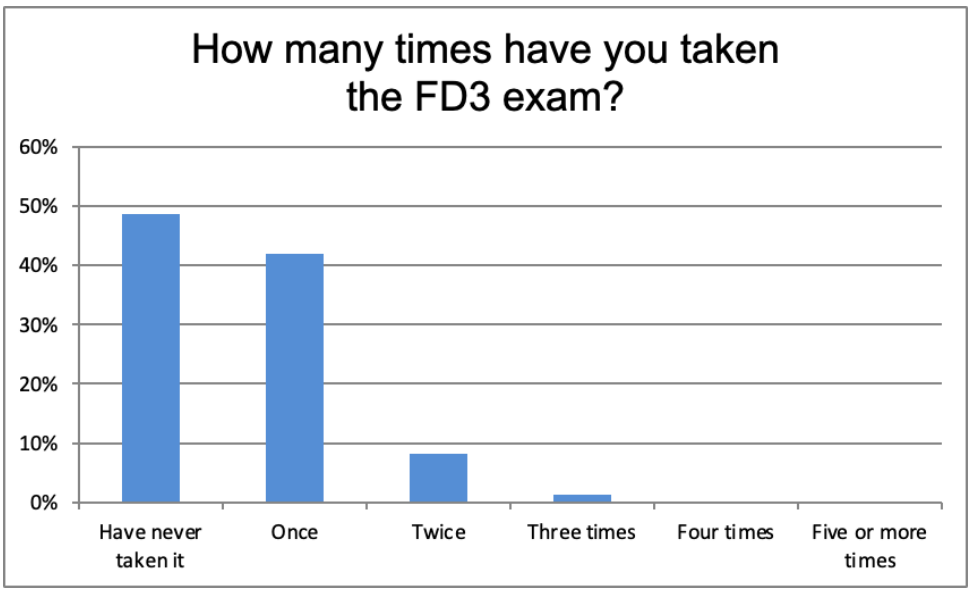
“There are many good ways to draft a claim. The thought behind the claim needs to be assessed to capture those that solve problems competently in unique ways. Will the proposed changes do so?”

“I have for some time now thought there should be a 'client letter' part in FD2. Being able to provide some brief notes to the client, explaining why you have drafted the claims as you have done would be useful. This is a typical part of finalising the draft in real practice… It could also help avoid something that comes up in examiner reports a lot - if a candidate has not included an important feature in claim 1, it is difficult to know if this was an intentional risk for breadth or whether they have fundamentally misunderstood something. This could be clarified in the client notes.”

Other suggestions included considering pre-release of material, as for FD4, simplifying the scenarios, and removing the EQE exemption.

6. FD3 Exam

6.1. Respondents’ experience with the FD3 exam



6.2. FD3 feedback

As for FD2, there were few comments on the proposed changes to the FD3 exam, given the existing high levels of satisfaction with this exam.

The majority of respondents were positive about the changes, with just one respondent saying they disagreed with the change and felt that removing legal provisions made the exam less like real life. Some recommended pre-releasing material, as is proposed for FD4.

There was general support for synoptic marking, accompanied by concerns about how this would be implemented fairly in practice, as for the survey responses for FD1 and FD2.

Several respondents commented on the proposal to limit the number of claims:

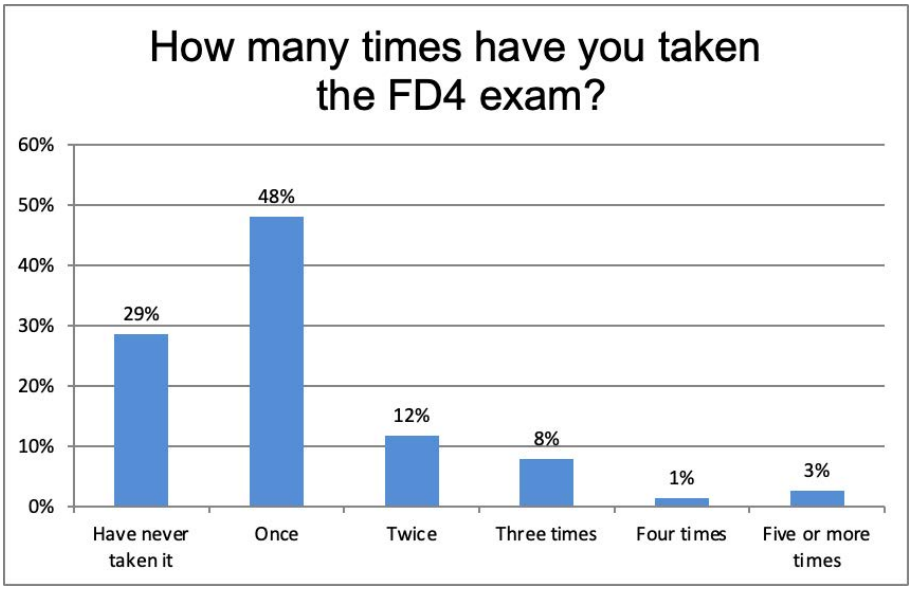
“I am supportive of ensuring that the burden of assessment on candidates is not onerous. Limiting the number of claims should contribute to this aim. However, it is also important that the number of claims be sufficient to ensure that the relevant outcomes will be assessed.”

“Reducing the number of independent claims seems like a positive move. Reducing the number of claims as a whole? I'm not sure there's any grounds to reduce the number of dependent claims in a paper - candidates should be able to separate the wheat from the chaff in dependent claims without too much difficulty, if they meet the required standard.”

7. FD4 Exam

7.1. Respondents' experience with the FD4 exam

Over two thirds (71%) of respondents had previously sat the FD4 exam.



7.2. FD4 Syllabus

Comments about the proposed changes naturally reflected respondents' satisfaction with the original FD4 exam and its fitness for purpose. Responses were broadly divided into:

- respondents who felt the proposed changes were good, because they agreed that the exam was in need of reform and felt the proposed changes helped to address previous problems (12 comments)
- respondents who saw the changes as "dumbing down" removing crucial elements that patent attorneys need to be tested on (Two comments relating to the syllabus, and further comments throughout the survey to the effect that the difficulty of FD4 is justified and necessary for testing fitness to practise)
- respondents who felt the proposed changes don't go far enough to address fundamental problems raised in the past about feasibility for candidates and the purpose of the exams in effectively testing fitness to practise. (Three comments)
- many respondents remarked that it was difficult to comment on the proposals without seeing more detail, particularly given that this was the paper with the most substantial changes proposed. (Comments from fourteen respondents)

Representative comments include (respectively):

"Hopefully, the proposed changes move towards a paper that is more relevant to "real life", rather than still requiring learning a specific method for passing the exam."

"FD4 has always been controversial, because it is the exam that candidates typically find the most difficult. It should be kept in mind that this difficulty arises primarily from some firms

focusing entirely on patent-prosecution work, particularly patent-prosecution work for US/Asia-based clients with no interest in enforcing their patents in the UK. This means there is a cohort of trainees who essentially have never dealt with I&V issues in their day-to-day work and hence find them unfamiliar.

However, it would be entirely wrong and deeply misguided to down-grade the importance of understanding I&V in patent attorney work, even if your focus is on patent-prosecution. I&V is the main point of the patent system and the main thing that clients are paying for: only a patent that is infringed and valid can be enforced. A patent that is drafted too narrowly to be enforced, or too broadly to be valid, is of little use to clients."

"FD4 is a notorious exam and passing it is not indicative of fitness to practice, much more is needed to overcome this issue"

"It is difficult to comment on this when the PEB has not released the sample paper that they have drafted. Without that, it is hard to comment on what "Assessment of amendment, sufficiency, and advice to be incorporated in construction, infringement, novelty and inventive step" actually means. This makes it sound like amendment, sufficiency and advice are still being tested and therefore there is no reduction in content."

Seven respondents commented that they thought the advice section should still be kept separate.

"Providing a memorandum of advice is a critical skill for patent attorneys, and is the summary of the FD4 exam response. This section cannot be incorporated into other parts of the examination answer. Being able to provide clear, cogent and sensible advice, consistent with the assessment of the scenario presented in the exam paper must be tested before deciding if a candidate is a competent patent attorney. This part of the proposal undermines the assessment objectives for this paper."

7.3. Reduction of exam length from 5 to 4 hours

Twenty respondents made comments in support of reducing the time, on the basis that this is fairer to candidates, and also beneficial to the profession. Perspectives from individual candidates and the diversity advisor include:

"I can't tell you how pleased I am to hear this. This is a really positive step for improving accessibility. The mental stamina required for a 5 hour exam was just ridiculous and unhealthy."

"We support this change, which we believe will help focus the assessment on competence rather than stamina. It is likely to be particularly helpful for disabled and neurodivergent candidates who, together with any appropriate adjustments, will then have a more "level playing field" in the exams compared to their non-disabled, neurotypical counterparts. Similar comments apply to other candidates in need of adjustments, for example breastfeeding parents.

“We also support any move that is likely to reduce the stress levels generated by the qualifying exams. This will support the mental wellbeing of trainee patent attorneys, with associated benefits in terms of their performance in, and enjoyment of, their work (including for example greater productivity, fewer errors, lower absence rates and improved staff retention). In turn it will help the patent profession – which currently has a reputation for being extremely difficult and stressful to access – to attract a wider range of future recruits. This we believe is healthier not only for individual patent attorneys, but also for the businesses they work in, the profession as a whole and the clients it serves.”

A further 20 respondents supported the reduction in time allowed, if the content was adjusted accordingly, and 11 respondents said it was difficult to tell whether this could work, without more information about the content. Some respondents felt that the pre-release of material was not in itself enough of a reduction to justify reducing the exam by one hour, and urged the PEB to ensure that content was still appropriately matched to the time available.

“In principle shorter is good. But please be very very sure that it's actually a four-hour exam, rather than a five-hour exam with only four hours allotted. I think extremely robust testing is needed to ensure that the time is reasonable. Also a word limit / page limit on the paper. Has anyone done analysis on paper length/word count vs. pass rate? I think that would be interesting.”

“A positive change, however I am concerned that the amount of work per time allocated will remain incredibly tight. An incredibly tight exam is not reflective of practice. A validity opinion in real life would not be rushed. Perhaps keeping the exam at 5 hours or even 4.5 but removing the content might be right.”

Twenty-two respondents opposed the reduction in time, saying that the time pressure was already the biggest problem, and reducing the time would make the situation worse.

“I would urge the PEB to maintain the current length of the exam, and reduce content, which would actually solve the problem.”

Additionally (mirroring divided opinions above about whether the exam should be made easier or harder) two respondents raised concerns about lowering standards, and felt that testing stamina through a long exam is part of testing relevant skills required in the profession:

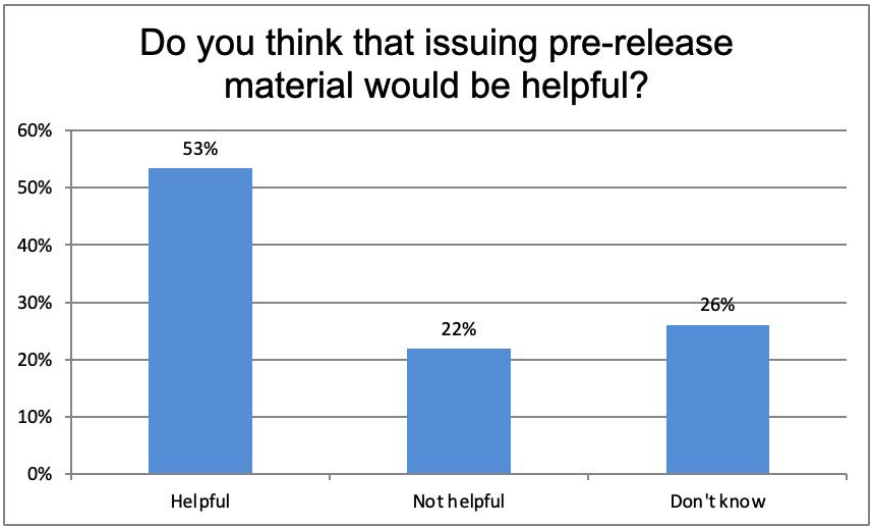
“Strongly disagree. If anything, the content should be increased, not decreased, as FD4 has already got easier and easier over recent years. A 5 to 6 hour exam is entirely appropriate for this level of rigorous testing to ensure competency in a challenging and competitive industry.”

“The proposal to reduce the time from 5 hours to 4 hours will devalue the qualification. From time to time it is necessary for a patent attorney to work for 5 hours straight. This should be tested. It is not possible to reduce the length of the exam and test the same aptitudes to the same extent.”

7.4. Pre-release material

A proposed change to the FD4 exams is to pre-release material containing technical background information, issued approximately two weeks before the examination.

Respondents were divided on whether that would be helpful, with just over half (53%) saying it would be helpful, and approximately a quarter saying it wouldn't be helpful (22%), or they weren't sure (26%).



Those in support mentioned that it would help candidates, by making the exam more realistic of real-world conditions, and a test of analysis rather than reading and writing speed. They also noted that pre-release may help to "level the playing field" across professional backgrounds so that candidates could familiarise themselves with the technology.

7.4.1. Concerns about pre-release material

Even for those supporting the proposal, a number of concerns were raised.

i. Pre-release would extend the burden of exam preparation, increasing candidate stress and time pressure, without any benefit of saving time during the exam

"I think there is a significant risk that this will just mean that candidates spend 2 weeks flat out reviewing the pre-release material.."

ii. Pre-release would not address the problem of enough time in the exam if the benefits are cancelled out by more content, or more complexity.

"Pre-release is a good idea and will help, but doesn't necessarily justify the reduction in the time allowed for FD4."

"Providing pre-release material should help to give candidates from all backgrounds more of an even footing. The examiners must, however, resist the temptation to make the subject-

matter more complex on the basis that candidates will have time to familiarize themselves with it in advance of the examination."

iii. Understanding the content within the timeframe of an exam is an important professional skill and should still be tested:

"The candidates should be able to understand the basic technical subject matter presented to them in the time of the exam, as they would have to understand technical details of an invention eg during a client meeting."

iv. Pre-release could introduce an unfair advantage to candidates with more support to prepare, especially in larger firms

"It is well known that the support that trainees receive differ from workplace to workplace and sometimes even from partner to partner. It is therefore to be expected that some trainees will receive extensive support in analysing the pre-released materials from their firm/colleagues. This would not be the case for some of the less-fortunate trainees. This increases the already existing imbalance in the amount of training and support trainees receive, depending on the firm they work at."

"it will almost certainly have 2 negative effects: 1) it will effectively increase the exam period for candidates, thereby increasing the stress caused by the exam. 2) It will increase imbalances in training and preparation support received by candidates. Expensive commercial courses will spring up trawling through the released material and analysing them. Alternatively, or additionally, well-resourced firms will organise in-house tutorials to analyse the content leading to a greater disparity. "

Two respondents suggested the pre-release time period to 2-3 days or a week. It was also noted that pre-release itself is not a reasonable adjustment as it benefits all candidates, and so reasonable adjustments would still be needed to "level the playing field" for candidates with additional needs.

7.5 Use of synoptic marking

As with the other FD exams, opinions on the use of synoptic marking was divided:

- Good idea in theory, as long as there is a way to make it fair and transparent (18 comments)
- Bad idea, because it is difficult to see how this can be done fairly and transparently (13 comments)
- Difficult to comment as it is not clear how the proposal would work in practice (11 comments)

One respondent suggested:

"The EQEs cope with varying answers by issuing adaptable mark schemes (e.g. in the case of papers A and B where multiple solutions are shown to be possible although not necessarily of equal value). Is this something that PEB have considered / will consider? Will

there be distinction made between “safe but not optimal solution” vs “optimal solution” when considering what counts as fitness to practice?”

Overall many respondents felt that synoptic marking was much better suited to assessing the quality of exam scripts:

“I am opposed to there being any marks scheme of the type which has been produced recently. This encourages the candidates to try to pick up each available half mark and therefore they spend all their time looking at acorns when they should be looking at the whole forest of oak trees. The candidates do need to have guidance as to what points the examiners considered to be important and why, but this needs not to be associated with an infinitely sub-divided mark scheme. It should be stressed to the candidates that what is needed is an answer which is internally consistent and well-reasoned, even if the conclusion it comes to is not the one the examiners regarded as the most likely. This does mean that the examiners will need to provide reasons to the PEB why candidates did not pass rather than just saying that not enough marks were accumulated but this should not add to the burden of examination.”

7.6 Additional comments on the proposed changes to FD4

Four candidates made overall comments in support of the changes, including:

“Hopefully, the proposed changes move towards a paper that is more relevant to "real life", rather than still requiring learning a specific method for passing the exam.”

More respondents had overall concerns about the proposed changes.

Six respondents said they still thought the exam was “fundamentally broken” and needed more reform.

Four respondents felt that the changes risked lowering standards in the patent attorney profession.

“I do not believe that the proposed approach will be suitable. These changes risk significant harm to the UK patent profession in terms of expertise and international reputation. The PEB need to go back to the drawing board on this. The EQE approach is far better and provides a reasonable amount of time (6hrs) to adequately cover what needs to be tested.”

8. Overall feedback on the Final Diploma Examinations

Some respondents expressed concerns about the overall approach to the changes:

“Overall the proposed changes seem vague and minor, and do not seem to represent a substantial implementation of the (also modest) recommendations of the Mercer review. Given the very long period between the commissioning of the Mercer report and these proposed changes, this seems like a missed opportunity for a more fundamental rethink.”

“We do not agree that reducing the burden of assessment is a valid reason for change, though, as the most important factor should surely be to produce good quality patent attorneys and for the exams to be written in a way that achieves that. Also, reducing the amount of reading seems questionable as an aim. Being a patent attorney necessitates being able to digest a lot of information which is perhaps a skill that should be tested.”

9. Do the proposed changes create a “level playing field” for people with protected characteristics (other than disability)?

Overall, the majority of respondents who commented on this question were not positive about the proposed changes creating a more level playing field. The question was largely interpreted as applying to people with disabilities.

Some commented that the pre-release of information and shortening of FD4 may help candidates with disabilities:

“Yes, in principle we believe that the shortening of FD4 from 5 to 4 hours, and also the supply of pre-reading material for the exam, should help level the playing field for disabled (including neurodiverse) candidates”

“The changes will affect all candidates equally and so there will be no help only to disabled candidates. I think that the changes overall will benefit all candidates but that will not remove the need to provide reasonable adjustments for disabled candidates”

Candidates commented that the time pressure intrinsically disadvantages people with disabilities:

“As long as exams are time-pressured, they will always either favour fast neurotypical people or people with mild impairment and generous extra time. If exams tested ability rather than speed, this wouldn't be a problem.”

“Shortening already stressful examinations with a high time pressure is literally the opposite of levelling the playing field.”

Another noted another significant area of disadvantage in the exams:

“The level playing field has been removed by mandating online examinations. Candidates have a huge variety of possible environments in which to take the examinations, and this, in my opinion, has a much greater effect on examination performance. A candidate taking the examination in a secluded private office has a ludicrous advantage over a candidate forced to take the examination in a stuffy bedsit because their firm cannot or will not provide a suitable location in which to take the paper. Unless the examinations are taken by all candidates in the same setting, then there will not be a level playing field.”

10. Key recommendations

As the changes are significant and opinions were naturally divided, the PEB was urged by respondents to keep the consultation going as more details become available. Key recommendations for the PEB are:

- Many respondents said they felt unable to comment where it was not clear how the changes would work in practice. Share more detail on the proposed changes as soon as possible so that the industry can continue to provide feedback to the PEB
- Overall, candidates support proposed changes which streamline the exams and make them more manageable and relevant to real life practice
- Overall view was opposition to removing designs from the FD1 exam (based on the comments - though this was not asked explicitly in the survey)
- Synoptic marking is a good idea if it can be truly be fair and transparent - great care needs to be taken to make the marking objective, and also accompanied by clear standards to help candidates prepare, and a robust appeals process
- More still needs to be done to make the exams more accessible for people with disabilities
- If information is pre-released, more guidance will be needed on how this will work
- Ensure that content is suitably reduced for the FD4 exam in line with the proposed time reduction
- Ensure enough transition time for the new exam so that candidates are not disadvantaged
- Ensure that professional standards are maintained and that core skills are not lost to the profession, if they are not tested in the FD exams.