

How Qualifying Examinations are marked

Introduction

This document aims to provide candidates with information on the procedures involved in marking their scripts. It is hoped that this will allay concerns expressed by some candidates about the lack of transparency and/or rigour and fairness in the setting, marking and awarding processes.

The setting of examination papers is the responsibility of the Principal Examiner.¹ Detailed Instructions for the Setting of the Examination papers and Mark Schemes are issued to assist Principal Examiners. These include advice on ensuring that, for Foundation examinations, every question falls within the syllabus, there is appropriate coverage of topics within each paper and there is sufficient coverage of all topics over time. For Finals examinations, advice is given to ensure that all the syllabus learning outcomes are covered in each examination. There are separate meetings of Foundation and Finals Principal Examiners together with the Chief Examiner and a patent attorney Governance Board member to discuss all papers alongside feedback from testers. Testers (normally two, one recently qualified patent attorney and one more experienced) sit the paper blind of the mark scheme, following which, they review their answers in light of the mark scheme. As a result of discussion at the meeting and feedback from testers, amendments may be made to the questions and associated mark schemes.

Prior to examinations being held, examiners are issued with Marking and Awarding Instructions; there are separate documents for Foundation and Finals examiners. These documents outline the duties of examiners and include information on standardisation of marking, marks reconciliation and the Awarding meeting. A summary of these processes are given below.

If an examiner has personal knowledge of a candidate, or teaches on courses that prepare students for Qualifying Examinations, they are required to complete and submit a Declaration of Conflict of Interest form. Whilst scripts are marked anonymously using a candidate number, if there is a conflict with a candidate, a Finals script will be allocated to a non-conflicted examiner. Where there is only one examiner, as in the majority of Foundation examinations, the marking of a 'conflicted' script will be checked by another examiner, normally the Chief Examiner. If an examiner is also a mentor, trainer or teacher, guidance is given to avoid any breach of examination confidentiality.

Standardisation

Following sitting of an examination, the Chief Examiner selects 3 scripts from each Foundation exam to be marked and used to standardise marking. For Finals examinations, each Principal Examiner selects 5 scripts for standardisation marking. All Marking Examiners are then required to mark these papers and submit their marks prior to a Standardisation meeting (separate meetings are held for each exam). Examiners are requested to mark up

¹ There are 3 types of examiner: Marking Examiners who mark the examination paper in accordance with the mark scheme; Principal Examiners who set an exam paper and oversee the marking examiners for their paper; the Chief Examiners who has overall responsibility for both Foundation and Final examinations. (The Chief Examiner also acts as a Principal Examiner).

to five additional scripts which may be included in discussion at the meeting. Standardisation meetings include the Principal Examiner, all Marking Examiners, the Chief Examiner (Foundation papers only), and a patent attorney and lay member of the Governance Board. At the standardisation meeting, the marks awarded to the standardisation scripts by all examiners are reviewed and differences discussed. The outcome of such discussion is to define an agreed approach to marking particular questions or sections, which may require amendments to the mark scheme. Examiners may raise issues arising from the marking of any additional scripts particularly if they raise questions about a candidate who has used a different approach that was not anticipated in the mark scheme. Decisions will be taken as to whether such an approach is valid and should be included in the mark scheme. Following the Standardisation meeting, the Principal examiner will issue all examiners a copy of the final mark scheme in preparation for marking all scripts; scripts considered at the standardisation meeting will be re-marked in light of the final mark scheme.

Marking

Examiners are allocated their proportion of scripts and a deadline for submission of marks. New examiners receive a smaller allocation of scripts compared to experienced examiners and a selection of their marked scripts is reviewed by the Principal Examiner. Foundation scripts are marked by one examiner (normally the Principal Examiner) whilst Final papers are double marked. For both Foundation and Finals examinations the pass mark is 50 or 50% in exceptions when the mark scheme total is not 100.

Reconciliation of marks in Finals Examinations

(a) Conflating Marks

Where both examiners have awarded a pass mark or both examiners have awarded a fail mark and the difference between the marks is less than 11 (5 for FD1 between 45 and 55), Patent Examination Board administration will total the marks and the mean mark will be shown as the one awarded.

(b) Significant Marks Difference

Where both examiners have awarded a pass mark or both examiners have awarded a fail mark and the difference between the marks is 11 or more (5 or more for FD1), the Principal Examiner will ask the examiners involved in marking to review their marks in discussion with each other and the Principal Examiner. Each marking examiner then confirms with the Principal Examiner that (i) a new mark is to be awarded or (ii) their original mark stands. This discussion must consider if the script meets the requirements of the Minimum Pass Descriptor (see Appendix 1) if relevant (see below).

(c) Pass/Fail

Where two examiners have respectively marked a 'fail' and a 'pass', this will be noted as an exception for review. The Principal Examiner will ask the examiners involved in marking to review their marks in discussion with each other and the Principal Examiner. This discussion must consider if the script meets the requirements of the Minimum Pass Descriptor.

Each Marking Examiner then confirms with the Principal Examiner that (i) a new mark is to be awarded or (ii) their original mark stands. If, after this process has taken place, the two original Marking Examiners still disagree about whether the script is a pass or a fail, the script will be marked by a third examiner (the Principal Examiner where he/she has not already marked the script). The average of the two passes or the average of the two fail marks will be awarded.

(d) Marginal script review

If one Examiner gives a mark of 47, 48 or 49, both Marking Examiners review the script to agree whether or not the fail is marginal. This discussion must consider if the script meets the requirements of the Minimum Pass Descriptor. If the averaged total then falls within the 47-49 band, the Principal Examiner reviews the paper. In other words, every mark that falls within the 47-49 bracket is reviewed during reconciliation.

Awarding

Separate Awarding meetings for Foundation and Finals examinations are held and attended by the Chief Examiner, Principal Examiners, and a patent attorney and lay member of the Governance Board. The purposes of the Awarding meeting are given below.

1. Ensure all candidates receive the appropriate result. (In exceptional circumstances, the Awarding Meeting may decide that the pass mark for a particular examination should be greater or less than 50% and how this the new pass mark should be determined).
2. Carry out the processes of checking that candidates' work just below the pass mark has been accurately and consistently marked.
3. Identify any remarking that should be carried out.
4. Scrutinise any 'conflict of interest' candidates.
5. Consider any reported cases of suspected malpractice.
6. Consider marks for cohorts affected by disruption. Such a review could include a statistical comparison of marks/pass rates for this cohort with those from a cohort who suffered no disruptions.
7. Review marks and/or scripts/evidence for candidates who made a request for special consideration (e.g. illness on the day of examination).
8. Consider relevant candidate comments from the candidate survey.

Following any necessary remarking of scripts, marks are prepared for communication to candidates by e-mail. After candidates have received their results, the names of candidates who have passed will be published on the Patent Examination Board website.

If a candidate has failed an examination and is not content that his/her examinations were marked accurately, s/he may wish to invoke the 'Enquiries about Results' procedure, which has three stages (see <http://www.cipa.org.uk/patent-examination-board/procedures/results-and-post-results-procedures>).

Appendix 1

Final Diploma Minimum Pass Descriptor

1. The minimally competent script will²:
 - a) evidence adequate ability to apply legal reasoning to practical situations;
 - b) present appropriate solutions to problems;
 - c) demonstrate the ability to assimilate data and information provided to extract most of the major issues;
 - d) usually differentiate between different forms of evidence and information;
 - e) discern the primary points but not always the overall picture;
 - f) show adequate familiarity with appropriate and accurate legal and technical language;
 - g) provide written work that generally advises and informs the client, with proposals that are largely practicable and achievable;
 - h) present most key information;
 - i) provide argument that is comprehensible, structured and reasoned;
 - j) contain written material which mostly suits requirements (e.g. letter, brief, recommendation, statement of facts).
2. A candidate who achieves the level of minimal competence:
 - a) will have met all the major learning outcomes of the assessment as evidenced by a general knowledge and application of fundamental aspects of law and practice within the script but not necessarily within every answer;
 - b) demonstrates a satisfactory performance overall; weaknesses are limited to areas such as patchy coverage of relevant material, minor inaccuracies and irrelevancies;
 - c) will not have produced contradictory statements or statements that would undermine advice provided or a client's patent rights.

² The elements of the performance descriptor are generic and must be applied in the context of the unit syllabus content.