

## Kaplan SQE Limited

## Solicitors Qualifying Examination (SQE)

## Mitigating Circumstances Policy

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### 1. Introduction

#### 1.1 Scope and purpose

Kaplan SQE Limited (Kaplan SQE) has been appointed by the Solicitors Regulation Authority Limited (“SRA”) as the sole provider of the Solicitors Qualifying Examination (“the SQE”) and the End Point Assessment Organisation (“EPAO”) for Solicitor Apprentices. Kaplan SQE handles mitigating circumstances in accordance with this Policy as required by the SRA.

Decisions on mitigating circumstances rest with the SQE Assessment Board as provided by regulations 8.4 and 12 of the [SQE Assessment Regulations](#). This Policy sets out the procedures to be followed in cases where a candidate wishes to submit a claim for mitigating circumstances in SQE1 and/or SQE2 or has been impacted by an assessment delivery failure (see paragraph 6 of this policy).

SQE1 consists of two assessments, FLK1 and FLK2. FLK1 and FLK2 must be taken in a single assessment window, except as outlined in regulation 4.3 of the [SQE Assessment Regulations](#). Both must be passed to pass SQE1. The SQE Assessment Board will consider a mitigating circumstances claim from candidates who have attempted either FLK1 or FLK2 or both. Candidates who fail to attend all of the SQE1 assessments they have booked are not covered by this policy, and should instead refer to the [SQE Assessment Terms and Conditions \(see 2.5 below\)](#).

SQE2 is a single assessment comprising 16 individual assessment stations, across two parts, SQE2 oral and SQE2 written, within an assessment window. The SQE Assessment Board will consider a claim for mitigating circumstances affecting one or more of the assessment stations comprising SQE2. Candidates who fail to attend the entire SQE2 assessment are not covered by this policy, and should instead refer to the [SQE Assessment Terms and Conditions](#).



## 1.2 Fairness

We are committed to ensuring that this Policy is fair and transparent and is operated in a manner which:

- treats all candidates equally and fairly in the consideration of their claims
- gives reasons for our actions and the decisions we make.
- is free from bias.
- has reasonable timescales for both submissions to and responses from us.

## 1.3 Confidentiality

Information provided by candidates under these procedures will be treated confidentially and only shared with those persons necessary to consider their claim.

## 1.4 Timescales

With the exception of candidates who have a mitigating circumstances claim following an assessment delivery failure, as outlined in paragraph 6, candidates must submit a mitigating circumstances claim by the deadlines in paragraph 4.2 and 4.3 of this policy. We expect that candidates will meet all other timescales outlined in this policy. Where there are exceptional circumstances which mean a candidate cannot reasonably meet those other timescales they must communicate this to us before the deadline for submitting a claim with evidence to justify the delay. Where accepted, and where possible, new timescales may be agreed (see paragraph 4.6).

## 1.5 Candidates with a disability

Where a candidate has a disability, information will be made available to them in appropriate formats and reasonable adjustments will be made to accommodate their needs.

## 1.6 Review of this Policy

This Policy will be monitored on an ongoing basis and any necessary amendments will be made and implemented at the earliest opportunity. As a minimum, Kaplan SQE will review this and all associated policies on an annual basis as part of its quality assurance procedures.

# 2. Claims for mitigating circumstances

## 2.1 Definition

For the purpose of this Policy, “Mitigating Circumstances” has the following meaning:



- a) A mistake or irregularity in the administration or conduct of the assessment; or
- b) Evidence of bias in the conduct of the assessment; or
- c) Subject to the [Fit to Sit Policy](#) and [SQE Assessment Regulations](#) a candidate's illness or other personal circumstances beyond their reasonable control

which have, or are likely to, materially and adversely affect a candidate's marks or performance in the assessment.

- 2.2 For the purpose of this Policy, "Assessment delivery failure" means a system, technical or other operational failure, declared by Kaplan SQE on the day of the failure, that has had the effect of preventing delivery of the assessment. The principles and process is set out in paragraph 6 of this policy.
- 2.3 Candidates who consider that their marks or performance in any element of an SQE assessment have been, or are likely to have been, materially and adversely affected by any of the circumstances outlined in 2.1, or who consider that their failure to attend an assessment can be attributed to any of those circumstances, may make a claim for mitigating circumstances.
- 2.4 For the avoidance of doubt, candidates cannot make a claim for mitigating circumstances if they:
  - a) fail to attend both FLK1 and FLK2, having been scheduled to attempt both SQE1 assessments
  - b) fail to attend either FLK1 or FLK2, having been scheduled to attempt just one of the SQE1 assessments
  - c) fail to attend the entire SQE2 assessment (i.e. they are absent from all 16 assessment stations).
- 2.5 A candidate who fails to attend all booked assessments within an assessment window, as described in 2.4, will not be considered to have attempted the relevant assessment. In the event of such non-attendance by a candidate for any reason, the cancellation charges specified in the [SQE Assessment Terms and Conditions](#) shall apply.
- 2.6 A candidate who is booked to attend both FLK1 and FLK2 SQE1 assessments but who fails to attend one of these assessments should submit a claim for mitigating circumstances providing clear evidence for their non-attendance. Rejected claims, or where no claim is made, will result in an attempt being registered for both assessments, including the one that was not attended.
- 2.7 Disagreement with the academic judgement of the assessors/markers cannot amount to mitigating circumstances. Academic judgement means the professional



and scholarly knowledge and expertise which the assessors have drawn on to reach a decision about a candidate's performance in an assessment.

- 2.8 A candidate who considers that their performance is likely to be affected by mitigating circumstances as described in 2.1(c) which arise before signing the 'fit to sit' declaration is normally expected to withdraw from the assessment. Candidates in this position should refer to the SQE Assessment Terms and Conditions. A mitigating circumstances claim made in respect of circumstances existing before the candidate signed the 'fit to sit' declaration will not usually be accepted, unless a candidate is able to clearly evidence why they attempted the assessment and signed the 'fit to sit' declaration.
- 2.9 The following are examples of the circumstances which would not be accepted where a candidate has signed the 'fit to sit' declaration and subsequently sat the assessment. This list is not exhaustive:
- the need to sit the assessment due to employment or training contract dates.
  - issues impacting assessment preparation / study time.
  - sitting the assessment because of the cost of assessment fees or assessment cancellation charges.
- 2.10 Where mitigating circumstances arise during the assessment the candidate must report the mitigating circumstances to an invigilator as soon as possible and at the latest before leaving the test centre.
- 2.11 Candidates reporting mitigating circumstances during an assessment will not normally be allowed any additional time to complete an assessment unless an error of process on the part of Kaplan SQE or the test centre has denied them the full time to complete the assessment and it is practicable to allow additional time.
- 2.12 Ongoing medical conditions or disabilities that affect candidates do not fall within mitigating circumstances as defined by this Policy. Arrangements for meeting the needs of candidates who have ongoing conditions and/or a disability are dealt with according to the [SQE Reasonable Adjustments Policy](#). We do recognise however, that there may be circumstances when a candidate may experience specific difficulties related to their condition during an assessment, which may need to be considered under this Policy (for example a flare-up). Where this occurs, the candidate should submit a Mitigating Circumstances claim. When assessing that claim, the Assessment Board will be entitled to also consider the reasonable adjustments that were put in place during the assessment.

### **3. Circumstances which would not usually meet the definition of mitigating circumstances**

The following are examples of the circumstances which would not usually meet the definition of mitigating circumstances. This list is not exhaustive.



- transport issues
- holiday/family events
- misreading the assessment timetable
- employment
- disruptions to exam preparation / study time

#### 4. Making a claim

- 4.1 Paragraph 4 does not apply to candidates impacted by an assessment delivery failure as set out in paragraph 6.
- 4.2 If a candidate wishes to proceed with a claim for mitigating circumstances, they must complete and submit the [SQE1 Mitigating Circumstances Form](#) or [SQE2 Mitigating Circumstances Form](#).
- 4.3 For SQE1, all claims must be made by **16:00 GMT on the fifth working day after the relevant booked assessment day**.
- 4.4 For SQE2, all claims must be made by **16:00 GMT on the fifth working day after the candidate's last assessment station**.
- 4.5 Mitigating circumstances claims submitted after the deadlines in paragraph 4.3 and 4.4 will not be accepted. Candidates who miss the deadline could submit the mitigating circumstances as part of a first stage appeal, in accordance with the SQE Appeals Policy, after the assessment results are released.
- 4.6 The Mitigating Circumstances Claim Form must be accompanied by independent supporting written evidence as appropriate for the mitigating circumstances raised. Where a claim is made on the grounds of illness under 2.1(c), a medical certificate must be provided as evidence of illness including relevant dates and the nature, onset and duration of the condition.
- 4.7 As noted in 1.4, candidates are expected to meet the time limits in communicating with us. In the event that written evidence cannot be provided within the five working days, the Mitigating Circumstances Form must still be submitted by the five working day deadline. The candidate must contact the Equality and Quality Team ([equality.quality@sqa.org.uk](mailto:equality.quality@sqa.org.uk)) to explain the reason for the delay in submitting the written evidence. The Equality and Quality Team will advise the candidate of a revised deadline for submission of the outstanding written evidence. The deadline for submission will be with reference to ensuring that the mitigating circumstances claim can be considered by the Mitigating Circumstances Panel (MCP).
- 4.8 Where independent written evidence cannot be provided, the MCP will reach a decision on the claim based on the information available and circumstances in the claim.



- 4.9 We will acknowledge receipt of the Mitigating Circumstances Form within five working days of receiving it.
- 4.10 Kaplan SQE reserves the right to verify the authenticity of all evidence submitted in respect of mitigating circumstance claims.

## 5. Consideration of claim

- 5.1 Claims will be considered by the MCP that will determine (a) whether the claim amounts to mitigating circumstances; and (b) whether the evidence presented substantiates the facts on which the claim is made. Where necessary, the MCP may call for further evidence and/or undertake an investigation. The standard of proof in a mitigating circumstance claim is on the balance of probabilities.
- 5.2 All evidence submitted must be written in English, or Welsh at the candidate's choice where the candidate sat the assessment in Welsh. Where the original evidence is not written in English or Welsh, the candidate must submit a verified translation at the candidate's expense.
- 5.3 The MCP will comprise of at least two representatives of Kaplan SQE and a representative of the Solicitors Regulation Authority. The MCP will convene to review candidate claims and will record in writing its recommendation to the Assessment Board in relation to each claim.
- 5.4 Recommendations of the MCP will be reported to the Assessment Board for approval.
- 5.5 Where the Assessment Board accepts a Mitigating Circumstances claim, the Board will normally discount the attempt which was subject to the claim. The pass mark cannot be changed.
  - 5.5.1 A candidate mark on SQE1 cannot be changed.
  - 5.5.2 SQE2 is a single assessment of competence comprising 16 individual stations. The Assessment Regulations do not permit a candidate to re-take only individual assessment stations. In exceptional circumstances, where mitigating circumstances are accepted for an assessment station and further statistical analysis of the candidate's performance across all stations provides evidence that the candidate would have passed had the event not occurred, the one directly impacted assessment station will be removed and the candidate mark recalculated based on 15 stations.
  - 5.5.3 Where the attempt which was subject to the claim is discounted, a refund for all or part of the fee of the assessment will be made in accordance with the [SQE Assessment Terms and Conditions](#).
- 5.6 Providing false information and / or making a fraudulent Mitigating Circumstances



claim amounts to malpractice and improper conduct, and would be dealt with under regulation 13 of the SQE Assessment Regulations.

- 5.7 A candidate who disagrees with the decision of the Assessment Board may appeal against the decision provided that they are able to establish a ground for the appeal as set out in the [SQE Appeals Policy](#).

## 6. Assessment delivery failure

- 6.1 Where the assessment delivery failure prevents a candidate from starting an assessment, Kaplan SQE will endeavour to reschedule the assessment.

6.1.1 The candidate can elect to sit on the rescheduled date if they feel able to declare themselves fit to do so in accordance with the Fit to Sit Policy.

6.1.2 If Kaplan SQE is unable to reschedule the impacted assessment, or the candidate is unable to declare themselves fit to sit the rescheduled assessment or the candidate is not available to sit the rescheduled assessment:

- The candidate will be automatically deemed to have made a successful mitigating circumstance claim in accordance with Regulation 12 (Mitigating Circumstances); and
- The attempt will be discounted, and the candidate will receive an assessment fee refund in accordance with the SQE Terms and Conditions.

- 6.2 Where a candidate has started the assessment and an assessment delivery failure prevents a candidate from completing the assessment, Kaplan SQE will endeavour to reschedule the assessment or assessment station(s) impacted by the assessment delivery failure.

6.2.1 The candidate can elect to sit on the rescheduled date if they feel able to declare themselves fit to do so in accordance with the Fit to Sit Policy.

6.2.2 If Kaplan SQE is unable to reschedule the impacted assessment or assessment station(s), or the candidate is unable to declare themselves fit to sit the rescheduled assessment or assessment station(s) or the candidate is not available to sit the rescheduled assessment or assessment station(s) the candidate has the following options:

6.2.2.1 Have the assessment marked. If the candidate has failed, the candidate will automatically be deemed to have made a successful mitigating circumstances claim in accordance with Regulation 12. The outcome is as set out in paragraph 5.5; or

6.2.2.2 The candidate will be automatically deemed to have made a successful mitigating circumstance claim in accordance with Regulation 12. The assessment attempt will be immediately discounted, and the candidate will receive an assessment fee refund in accordance with the SQE Terms and Conditions.