Introduction

1. The College’s Regulations for Taught Programmes of Study indicate a number of areas where boards and sub-boards of examiners may use their discretion in coming to an academic judgement, rather than applying a strict rule or formula. These areas include:
   - Recommending an award, or awarding a classification, other than that indicated by the normal formula applied, where the normal formula indicates that the student is on a “borderline” between pass and fail or between degree classifications;
   - Decisions on how a student may proceed if they have not passed a module, including the award of a “compensated fail”;
   - The method of assessing for an individual module where mitigating circumstances have been accepted;

2. This document is intended for use by boards and sub-boards of examiners, to give guidance on the use of discretion. It is for guidance only and should not be considered as a regulatory document. Regulations and policies related to the College’s awards are available from the Registry website:

   http://www.bbk.ac.uk/reg/regs

3. This document will give guidance on how boards and sub-boards should exercise their discretion, what the reporting requirements on the use of discretion are and what decisions may be made. Further guidance may be obtained from the Academic Standards and Quality team in Registry Services.

Principles

4. The College’s Regulations for Taught Programmes of Study are intended to define the conditions that must be satisfied in order for an award to be conferred on any student. The College’s academic policies define how the College will apply these regulations in specific circumstances. The broad purpose of the College’s regulations and policies is to enable the boards and sub-boards of examiners to undertake their duties, and exercise their academic judgement for each student, as efficiently as possible.

5. It is, however, recognised that not all situations can be envisaged within regulation and policy and that there will often be situations where a formulaic approach is unsatisfactory. For instance, strict application of a classification formula will often prevent a sub-board of examiners from making an award that, in their academic judgement, is the most appropriate.

6. The College’s regulations and policies therefore refer to a number of areas where sub-boards may exercise their judgement in individual cases to make decisions other than those suggested by applying regulation and policy.

7. **Boards and sub-boards should ensure that their approach to the use of discretion is consistent;** where appropriate criteria for the use of discretion should be established and
published. Where a board or sub-board exercises its discretion the decision taken should be carefully minuted and / or reported, with reasons given for the decision. Reports to College Boards of Examiners should include reports on the use of discretion by a sub-board in the period being reported upon.

Awards and Classifications

8. College awards and classifications are usually decided by the application of a formula, defined in the Regulations for Taught Programmes of Study. This formula will usually determine a result, on a scale of 0-100, with a pass mark and bands equating to award classification.

9. Boards and sub-boards will often have discretion to consider an alternative decision or classification where a student falls within a certain range of the pass mark or a classification boundary – this will be within 2 percentage points of that boundary. In no instances are boards and sub-boards allowed to change actual marks. Please note paragraph 9 of the College Policy on the Operation of Boards and Sub-Boards of Examiners.

10. While in many subjects there may be a margin for error in assigning a mark to a given piece of work, marks should not normally be changed e.g. increased simply to enable a student to reach a pass mark or classification boundary. Where a student falls within a “borderline” for the use of discretion then a sub-board or board may consider using its discretion to make an award or classification other than that suggested by the classification formula.

11. There is no expectation that boards or sub-boards will use their discretion to raise any individual student to a higher classification than that suggested by their classification formula. Boards and sub-boards may consider a range of factors when deciding whether to make an award or higher classification to such students; if they are not satisfied that there is sufficient reason to award or raise the classification in such circumstances then the decision should remain as indicated by the classification formula.

12. Sub-boards may use discretion to recommend a pass or raise a classification, provided that the process is applied consistently to all candidates considered by that sub-board. The following are circumstances in which discretion can be applied:

- Preponderance: meaning when reviewing the profile of past module marks; the sub-board may note that there is a preponderance (50% or more) of credit in the higher classification. In this case the candidate’s degree classification can be promoted. Preponderance judgements should include all credit studied including credit studied at levels that do not contribute to the classification calculation (e.g. level 4 for UG honours degrees). The credit awarded in the higher classification to be considered for a preponderance judgement should account for 50% or more of the total award.
- Unrepresentative performance in one module which has affected the overall classification.
- Strong performance in a particular module (e.g. a dissertation module at UG level)
- Documented mitigating circumstances.¹

¹ See College Mitigating Circumstances Policy, Procedure and Guidance
Sub-boards must make it clear in their reports and minutes as to the reason for applying discretion.

13. The classification formula gives a higher weighting to final year modules; **exit velocity should not therefore be used when exercising discretion**, as marks in the final year have already been given more weight than marks from previous years.

14. It is entirely possible that a student may gain a higher degree classification than another student on the same cohort, despite having a lower classification formula result, where that student has other factors that the sub-board has taken into account.

15. Sub-board decisions should be consistent. Wherever possible, the criteria for use of discretion should be published in advance, for instance in the programme handbook. Students should be made aware that credit that does not normally count towards classification calculations (e.g. level 4 for UG Hons degrees) may be taken into consideration in discretion judgements in cases of preponderance.

16. **All uses of discretion in relation to awards should be consistent throughout a programme and fully minuted, with reasons, by the relevant sub-board of examiners** (with full reports to the next available meeting of the sub-board where a decision has been taken by chair’s action). Full reports, including reasons for the use of discretion, should be made in the report from the sub-board to the relevant College Board of Examiners, so that the College Board can ensure that discretion is being used consistently across the College.

Reassessment and Compensated Fail

17. **Reassessment** - Where a student has **not passed a module**, and has **not used up their attempts on that module**, then a sub-board may:

- Offer “reassessment” in failed elements of the module;
- Advise that a “re-take”, involving attendance at lectures and seminars for that module, and submission of assessments will be necessary;

18. **Compensated Fail** - Where a student has **not passed a module** then the sub-board of examiners may recommend a fail for the module, or, where a student has achieved a result of 30% - 39% (undergraduate, other than LLB), 35-39% (LLB) and 40% -49% (postgraduate), the Sub-board may, at its discretion, offer a “compensated fail”. A “compensation fail” may not be recommended for a core module, with the exception of core modules on the LLB programme where up to 30 credits may be compensated at the discretion of the examination board. (Paragraph 27.1 of CAS regs). Where a student has not exhausted the prescribed number of attempts at that module the student may reject the offer of a compensated fail and seek to pass the module at the next available opportunity.

19. Sub-boards do not have discretion to recommend a pass for a module where the mark is below 40% (undergraduate) or 50% (postgraduate) (see paragraphs 24 below for guidance on mitigating circumstances).

20. Sub-boards may adopt local practice in relation to the decisions on reassessment and the award of compensated fails, e.g. by offering reassessment to all students above a certain threshold. Alternatively sub-boards may make decisions on a case-by-case basis. Decisions
should, as far as is reasonable, be made according to consistent criteria, which should be
published.

21. Where local practice is applied to groups of students then that practice should be defined
and reported to the sub-board. Where decisions are taken on a case-by-case basis then the
rationale for individual decisions should be reported to sub-boards, and minuted as
appropriate, with reasons given for any decisions taken.

22. There is no expectation that, where discretion is applied in the case of an individual student,
then every student with the same or higher mark will have the same decision applied; for
instance it is perfectly acceptable to award reassessment to a student with a mark of 33, but
to require a student with a mark of 34 to retake the module, provided that the reasons for
the decision are clear and have been reported and minuted appropriately.

Mitigating Circumstances

23. The College policy on mitigating circumstances is defined in the policy of the same name and
is found here: (http://www.bbk.ac.uk/mybirkbeck/services/rules/mitcircspol.pdf).

24. Sub-boards have discretion to use a variety of different responses where mitigating
circumstances are accepted; this does not normally include raising of marks, other than for
borderline pass/fail marks. Where a student has a mark within 2 % of the pass mark, and has
mitigating circumstances that have been accepted, then a sub-board may raise the mark to
the pass mark (provided this is in agreement with the external examiners and that
justification for doing so is clearly minuted).

25. Where mitigating circumstances are accepted then a sub-board (often acting through its
nominated committee) has discretion to use its academic judgement to decide on the fairest
way to assess the student’s achievement against the learning outcomes for that module.
This can include assessing the student on the coursework or examination only of the module
(where a student has not sat the other element as a result of mitigating circumstances) or
offering a further attempt at a module without penalty.

26. Sub-boards should ensure that they respond consistently to cases of mitigating
circumstances; the sub-board should consider whether it accepts the case as presented by
the student, and then, if so, how it wishes to respond. These decisions should be minuted,
and, where there is no specific practice that applies to all students, minute reasons for any
decision, and report these decisions to the College Board.

External Examiners

27. College policy and Guidance on the Role of External and Intercollegiate Examiners is found

28. External examiners provide valuable independent and external input into the college
assessment processes and is an important part of the college’s quality assurance and
enhancement process. Paragraph 9 of the college policy and guidance on the role of external
and intercollegiate examiners states “The primary duty of an external examiner is to report
on...the extent to which its assessment processes are rigorous, ensure equity of treatment
for students and have been fairly conducted with institutional regulations and guidance”. Their role can be utilised by sub-boards in order to ensure a consistent approach to issues of discretion.

29. Paragraph 16 notes that “External examiners should not recommend the amendment of marks for individual students or pieces of work unless they have seen all of the assessed work for the module in question”. External examiners can recommend that all marks within a module be “re-scaled” if, as a result of their moderation, they consider that the general standard of marking within the module is too harsh or too lenient.

L&T Working Group
May 2015