ACL Training

December 2021: Marker Guidance: Unit 2

The marking rubric and guidance is published as an aid to markers, to indicate the requirements of the examination. It shows the basis on which marks are to be awarded by examiners. However, candidates may provide alternative correct answers and there may be unexpected approaches in candidates' scripts. These must be given marks that fairly reflect the relevant knowledge and skills demonstrated. Where a candidate has advanced a point that is not included within the marking rubric please do make a note of the same so that it can be raised at the standardisation meeting.

Mark schemes should be read in conjunction with the published question paper and any other information provided in this guidance about the question.

Before you commence marking each question you must ensure that you are familiar with the following:

- ☑ the requirements of the specification
- ☑ these instructions
- ☑ the exam questions (found in the exam paper which will have been emailed to you along with this document)
- ☑ the marking rubric

The marking rubric for each question identifies indicative content, but it is not exhaustive or prescriptive and it is for the marker to decide within which band a particular answer falls having regard to all of the circumstances including the guidance given to you. It may be possible for candidates to achieve top level marks without citing all the points suggested in the scheme, although the marking rubric will identify any requirements.

It is imperative that you remember at all times that a response which:

- ☑ differs from examples within the practice scripts; or,
- ☑ includes valid points not listed within the indicative content; or,
- ☑ does not demonstrate the 'characteristics' for a level

may still achieve the same level and mark as a response which does all or some of this.

Where you consider this to be the case you should make a note on the script and be prepared to discuss the candidate's response with the moderators to ensure consistent application of the mark scheme.

SECTION A (all compulsory – 40%)

Question 1:	Describe the procedure and the usual costs consequences set out in the Civil Procedure Rules where a Claimant chooses to discontinue all or part of their claim.
Total Marks Attainable Fail = 0-4.9 Pass = 5+ Merit = 6+ Distinction = 7+	10
Indicative Content	**Marks**
Required a discussion on when a claim may be discontinued and the impact of discontinuance, e.g: ***When:*** A claimant may discontinue all or part of a claim at any time. A claimant must obtain the permission of the court if he wishes to discontinue all or part of a claim in relation to which the court has granted an interim injunction, any party has given an undertaking to the court has received an interim payment in relation to a claim (and cannot obtain consent) or where there is more than one party (and cannot obtain consent). Where there is more than one defendant, the claimant may discontinue all or part of a claim against all or any of the defendants. ***Credit reference to the citing of any supporting authority, e.g:*** CPR 38.2(1), CPR 38.2 (2) and CPR 38.2 (3). ***Impact on proceedings:*** Discontinuance against any defendant takes effect on the date when notice of discontinuance is served on him. The proceedings are brought to an end as against him on that date. However, this does not affect proceedings to deal with any question of costs. ***Credit reference to the citing of any supporting authority on the impact of discontinuance, e.g:*** CPR 38.5(1), CPR 38.5(2) and CPR 38.5(3)	Up to 3 marks A pass must refer to CPR 38 and set out what it means to discontinue a claim
Candidates should include a discussion on the costs consequence of discontinuance e.g: ***Costs provisions of the CPR:*** Unless the court orders otherwise, a claimant who discontinues is liable for the costs which a defendant against whom the claimant discontinues incurred on or before the date on which notice of discontinuance was served on the defendant. If proceedings are only partly discontinued the claimant is liable for costs relating only to the part of the proceedings which he is discontinuing; and unless the court orders otherwise, the costs which the claimant is	Up to 4 marks

liable to pay must not be assessed until the conclusion of the rest of the proceedings. This rule does not apply to claims allocated to the small claims track. ***Credit reference to the citing of any supporting authority on the costs provisions in the CPR, e.g:*** CPR 38.6(1), CPR 38.6(2) and CPR 38.6(3). ***Claimant avoiding the usual position:*** The burden is on the claimant to show why they shouldn't pay the costs, the fact that the claimant may not have succeeded is irrelevant. However, the fact the claim is likely to have failed is a factor the court should consider when deciding if the presumption is to apply. Motivating factors for discontinuing alone (such as practical and financial reasons) are unlikely to be sufficient but a change of circumstances might be if he did not cause that change. The defendant's unreasonable conduct may be a reason. The court should consider the factors in CPR 44.2(4) which includes conduct as defined by CPR 44.2(5) when deciding to depart from the presumption. ***Credit reference to the citing of any supporting authority on the claimant avoiding the usual position, e.g:*** Brookes v HSBC Bank [2011], Nelsons Yard Management v Eziefula [2013], Barker v Barnett [2015] and Sheinberg v Abdon [2019].	
Candidates should be credited for any further point they make in relation to costs, e.g: ***Application of QOCS:*** QOCS applies to personal injury and fatal accidents claims both under the Fatal Accidents Act 1976 and under section 1(1) of the Law Reform (Miscellaneous Provisions) Act 1934. QOCs protection can be lost and orders can be enforced where proceedings are struck out because there were no reasonable grounds for bringing the proceedings, there is an abuse of process or the conduct of the claimant (or a person acting on his behalf with his knowledge) is likely to obstruct the just disposal of the proceedings. The claimant is entitled to discontinue, the notice of discontinuance should not be set aside. There is a distinction between a claim being struck out and set aside, this may be a lacuna in the rules. ***Credit reference to the citing of any supporting authority on QOCS, e.g:*** CPR 44.13-44.17, Kite v Phoenix Pub Group [2015] and Shaw v Medtronic Corevalve LLC and others [2017]. ***Sanderson and Bullock Orders:*** Where there are multiple defendants and proceedings are discontinued against one defendant, the unsuccessful defendant may be ordered to pay the successful defendant's costs. Where there are multiple defendants and proceedings are discontinued against one defendant, the claimant may be permitted to pay the successful defendant's costs but may be permitted to recover those costs from the unsuccessful defendant. ***Credit reference to the citing of any supporting authority on Sanderson***	Up to 3 marks

and Bullock Orders, e.g: Sanderson v Blyth Theatre Company [1903] and Bullock v London General omnibus [1907].	
Discussion on the Procedure for discontinuing, e.g: ***The procedure:*** To discontinue a claim or part of a claim, a claimant must file a notice of discontinuance and serve a copy of it on every other party to the proceedings. The claimant must state in the notice of discontinuance which he files that he has served notice of discontinuance on every other party to the proceedings. Where the claimant needs the consent of some other party, a copy of the necessary consent must be attached to the notice of discontinuance. Where there is more than one defendant, the notice of discontinuance must specify against which defendants the claim is discontinued. ***Credit reference to the citing of any supporting authority on procedure, e.g:*** CPR 38.3(1), CPR 38.3(2), CPR 38.3(3) and CPR 38.3(4).	Up to 2 marks

Question 2:	Describe when a Costs Order made in favour of a party to proceedings who has taken out an After The Event costs insurance policy may include provision requiring the payment of an amount in respect of all or part of the premium of the policy.

Total Marks Attainable Fail = 0-4.9 Pass = 5+ Merit = 6+ Distinction = 7+	10
Indicative Content	**Marks**
Required: Candidates must demonstrate knowledge of the legislative framework governing the recoverability of ATE premiums, e.g: ***The legislative framework:*** The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) renders that ATE premiums are no longer recoverable from the paying party. The Act introduced a new section 58C of the Courts and Legal Services Act 1990 which prevents recovery of any premium for an after the event insurance policy. A costs order made in favour of a party to proceedings who has taken out a costs insurance policy may not include provision requiring the payment of an amount in respect of all or part of the premium of the policy, unless permitted under the legislation. The legislation provides that the Lord Chancellor may make regulations in clinical negligence cases permitting for the recovery of ATE premiums in relations to medical experts reports. ***Credit reference to the citing of any supporting authority on the legislative framework, e.g:*** Section 46(1) of the Legal Aid Sentencing	Up to 6 marks

and Punishment of Offenders Act 2012, section 58C(1) of the Courts and Legal Services Act 1990 and section 58C(2) of the Courts and Legal Services Act 1990. ***Further rules:*** Insurance premiums are recoverable where the insurance is against the risk of incurring experts fees re liability and causation in clinical negligence proceedings, the part of the policy recoverable relates to the experts reports, and the damages claimed are valued at £1000.00 or more. There are no other rules or practice directions to give guidance on the assessment and recoverability of premiums and it was commented in the C of A decision that this ought to be looked at by the Rules Committee. ***Credit reference to the citing of any supporting authority on the further rules, e.g:*** Recovery of Costs Insurance Premiums in Clinical Negligence Proceedings (No 2) Regulations 2013 and Peterborough & Stamford Hospital NHS Trust v McMenemy [2017].	
Credit any discussion on the court's discretion, e.g: ***Court's discretion:*** Court has discretion as to costs BUT emphasis on proportionality because of the standard basis of assessment. Where the amount of costs is to be assessed on the standard basis, the court will only allow costs which are proportionate to the matters in issue. Costs which are disproportionate in amount may be disallowed or reduced even if they were reasonably or necessarily incurred; and resolve any doubt which it may have as to whether costs were reasonably and proportionately incurred or were reasonable and proportionate in amount in favour of the paying party. Where the amount of costs is to be assessed on the indemnity basis, the court will resolve any doubt which it may have as to whether costs were reasonably incurred or were reasonable in amount in favour of the receiving party. ***Credit reference to any authority cited in relation the court's discretion as to costs, e.g:*** Section 51 of the Senior Courts Act 1981, CPR 44.2, CPR 44.3(2), CPR 44.3 (3).	Up to 2 marks
Candidates should have developed their discussion on what challenges may be made to the such a premium, e.g: ***Challenges:*** There have been a number of challenges to ATE premiums: Not all sum paid was premium, the premium is too high compared to others available on the market and the formula used leads to disproportionate premium. Identifying which part of the premium relates to experts' reports may be difficult. ***Credit reference to any authority cited in relation to challenges as to recoverability, e.g:*** Emily Nokes v Heart of England Foundation NHS Trust [2015] ***Applicability of CPR:*** Despite a period of uncertainty in relations to an ATE premium taken out after 1 April 2013, it is now clear that the new	Up to 4 marks

proportionality test applies to post-LASPO clinical negligence ATE premiums. The CPR is engaged when assessing recoverability of ATE premiums and they are subject to the scrutiny of the Court. ***Credit reference to any authority cited in relation to the applicability of the CPR, e.g:*** BNM v MGN Ltd [2016], King v Basildon & Thurrock Hospital NHS Trust [2016], Murrell v Cambridge University Hospital NHS Trust [2017] and Peterborough & Stamford Hospital NHS Trust v McMenemy [2017]. ***Proportionality:*** Proportionality is a two-stage test and once reasonableness has been considered the Court should remove all unavoidable costs before making any deduction to reach a proportionate figure. Unavoidable costs may include ATE premiums. The Court require expert evidence if a premium is to be challenged. ***Credit reference to any authority cited in relation to the test of proportionality, e.g:*** BNM v MGN Ltd [2017], May v Wavell Group [2016], May v Wavell Group [2017] and West and Demouilpied v Stockport NHS Foundation Trust [2020].	

Question 3:	Describe the authority that should be considered where the Court is considering making a Wasted Costs Order against a Costs Lawyer.

Total Marks Attainable Fail = 0-4.9 Pass = 5+ Merit = 6+ Distinction = 7+	10
Indicative Content	**Marks**
Required - a discussion on the Courts general discretion as to costs e.g: ***Discretion:*** Costs payable by one party to another are the discretion of the court. The Court may consider a number of factors when determining what type of order to make. Court can consider conduct when making an order for costs ***Credit reference to any authority cited on the court's discretion, e.g:*** Section 51 of the Senior Courts Act 1981, CPR 44.2, CPR 44.2(4) and CPR 44.2(5).	Up to 2 marks
Credit the identification of key legislative provisions e.g: ***Legislative Provisions:*** The court shall have full power to determine by whom and to what extent the costs are to be paid. The court may disallow, or order the legal or other representative concerned to meet, the whole of any wasted costs or such part of them as may be determined in accordance with rules of court. Wasted costs means any	Up to 4 marks

costs incurred by a party as a result of any improper, unreasonable or negligent act or omission on the part of any legal or other representative or any employee of such a representative; or which, in the light of any such act or omission occurring after they were incurred, the court considers it is unreasonable to expect that party to pay. Where the court orders a legal representative to pay wasted costs it must inform an approved regulator or the Director of Legal Aid Casework as it considers appropriate. ***Credit reference to any authority cited on the legislative provisions, e.g:*** Section 51(3) of the Senior Courts Act 1981, Section 51(6) of the Senior Courts Act 1981, Section 51(7) of the Senior Courts Act 1981 and Section 51(7A) of the Senior Courts Act 1981.	
Credit a discussion the procedure for applying for and making a wasted costs order, e.g: ***The procedure of an application:*** The court will give the legal representative a reasonable opportunity to make written submissions or, if the legal representative prefers, to attend a hearing before it makes such an order. When the court makes a wasted costs order, it will specify the amount to be disallowed or paid. When the court makes a wasted costs order, it will direct a costs judge or a district judge to decide the amount of costs to be disallowed or paid. Such orders can be made at any stage in the proceedings up to and including the detailed assessment proceedings. In general, applications for wasted costs are best left until after the end of the trial. The court may make a wasted costs order against a legal representative on its own initiative. A party may apply for a wasted costs order by filing an application notice in accordance with Part 23 or by making an application orally in the course of any hearing. Wasted costs applications should be left until the end of the trial. ***Credit reference to any authority cited on the procedure for applying for and making a wasted costs order, e.g:*** CPR 46.8(2), CPR 46.8(3)(a), CPR 46.8(3)(b), CPR 46 PD 5.2, CPR 46 PD 5.3 and CPR 46 PD 5.4.	Up to 4 marks
Candidate should refer to any specific authority on wasted costs orders, e.g: ***Principles on wasted costs orders:*** Wasted costs orders are discretionary. A mere mistake is not sufficient for a wasted costs order, there must be unreasonable, improper or negligent conduct. Wasted costs orders should not be used as a threat. The respondent must be alerted to the possibility of a wasted costs order, must be apprised of the case against him and must be given adequate time and opportunity to respond. A wasted costs order can never be made where the causal link between conduct and costs incurred does not exist. The Tribunal should exercise its power to make a wasted costs order of its own motion with restraint. Indemnity costs orders are no longer limited to cases where the court wishes to express disapproval of the way in which litigation has been	Up to 2 marks To achieve more than a pass, candidates must not simply cite law but should show a greater depth to their knowledge base and apply the

conducted. Can be made even when the conduct could not properly be regarded as deserving of moral condemnation. The court must consider each case on its own facts. Conduct must be unreasonable to a high degree. 'Unreasonable' in this context does not mean merely wrong or misguided in hindsight. Whilst the pursuit of a weak claim will not usually, on its own, justify an order for indemnity costs, the pursuit of a hopeless claim (or a claim which the party pursuing it should have realised was hopeless) may well lead to an indemnity basis order. ***Credit reference to any authority cited on the principles behind making a wasted costs order, e.g:*** Harley v McDonald [2001], Ridehalgh v Horsefield [1994], Orchard v SE Electricity Board [1987], Cancino [2015], Awuah and Others [2017], Noorani v Calver [2009], Kiam v MGN Limited No2 [2002] and Wates Construction Limited v HGP Greentree Alchurch Evans Limited [2006].	authority to the question posed

Question 4:	Explain the principle that a Costs Lawyer cannot handle client money and whether that principle is relevant where a Costs Lawyer works for an SRA regulated firm.

Total Marks Attainable Fail = 0-7.4 Pass = 7.5+ Merit = 9+ Distinction = 10.5+	10
Indicative Content	**Marks**
Required: A discussion on the CLSB rules, e.g: ***Principle 3 of the CLSB Code of Conduct:*** Generally is about acting in the best interests of the client. A costs lawyer must not accept client money save for disbursements and payment of your proper professional fees. There is no mention of the CLs handling client money in the CLSB Practising Rules. ***Credit reference to any authority cited on the principle, e.g:*** Principle 3.6 of the Costs Lawyer Code of Conduct and CLSB Practising Rules.	Up to 3 marks
Required: Students must include a discussion as to what client money is what proper professional fees are and what disbursements are, e.g: ***No Definition:*** There is no definition of client money within any rules set by the CLSB and therefore you must look to either CILEx or SRA rules for the definition. The SRA provide that "Client money" includes money held or received relating to regulated services delivered to a client and money held or received in respect of fees and any unpaid disbursements if held or received prior to delivery of a bill for the same. The CILEx account rules define client money as money beneficially	Up to 6 marks

owned by anyone other than the Authorised Entity. ***Credit reference to any authority cited on the definition of client money, e.g:*** Rule 2.1(a) of the SRA Account Rules 2019, Rule 2.1(b) of the SRA Account Rules 2019, Rule 2.1(c) of the SRA Account Rules 2019, Rule 2.1(d) of the SRA Account Rules 2019 and the CILEx Account Rules. ***Proper professional fees:*** Fees incurred on having complied with a client instruction, made up of payment for services provided; and disbursements paid on behalf of the client. ***Disbursements:*** A disbursement is a sum that a Costs Lawyer spends on behalf of their client including the VAT element. Disbursements include, but are not limited to, court fees, counsel's fees, travel costs, postal costs (if exceptional sum e.g. courier), photocopying costs (if exceptional sum). Disbursements do not include hourly rates, telephone calls made or received, faxes made or received, or general office overheads. ***Credit reference to any authority cited on professional fees and disbursements, e.g:*** CLSB Guidance Note Handling Client Money (Principle 3.6)	
Credit discussion on whether the principle is relevant when a costs lawyer works for an SRA regulated firm, e.g ***Relevance:*** The principles of the CLSB Code of Conduct are relevant to all authorised persons that are regulated by the CLSB. The CLSB are an approved regulator and must ensure they meet the 8 regulatory objectives set out in the Legal Services Act 2007. They do this by issuing rules, e.g the a code of conduct and practising rules. ***Credit reference to any authority cited on approved regulators and authorised persons, e.g:*** Section 18 of the Legal Services Act 2007, Section 20 of the Legal Services Act 2007 and Section 1 of the Legal Services Act 2007 ***Requesting payment in advance:*** A costs lawyer can request payment in advance of their services when a Costs Lawyer is employed (PAYE) by, or is a partner in, a firm authorised and regulated under the Legal Services Act 2007 (LSA). For example, a firm of solicitors regulated by the Solicitors Regulation Authority (SRA), in which case prevailing SRA rules and regulations apply. A costs lawyer cannot request payment in advance of their services when a Costs Lawyer is working for a firm not authorised and regulated under the LSA or is a sole practitioner. Interim billing arrangements can be agreed with a client to reduce financial exposure on payment for services provided and reimbursement for disbursements.	Up to 3 marks

SECTION B (choice of 3 out of 5 – 60%)

<table>
<tr><td>Question 5:</td><td colspan="2">You work in the Litigation department of an SRA regulated firm, Hargreaves and Timble LLP. You are contacted by a fee earner, Julie Barnes, who has requested help on the file of Tremurs Ltd.

The Claimant is suing your client for breach of data protection legislation, breach of confidence and misuse of private information. The Claimant is claiming damages of up to £10,000 for 'psychological distress, stress, inconvenience and financial loss.'

On 23 August 2021 the Claimant's solicitors sent a letter before claim to your client by post and email. No response was received. On 8 September 2021 the Claimant's solicitors sent a second letter by post and email giving your client a further seven days to respond pointing out that your client was in breach of the pre-action protocol. Again, no response was received.

On 23 September 2021 the UK Government put the country into 'lockdown' because of the COVID-19 pandemic. On that day the Prime Minister said that people were going to be required to stay at home and work at home. All but essential workers were required, by law, to stay at home. There were only limited exceptions, such as for exercise and the purchase of essential items. It was a criminal offence to be outside if an exception did not apply. Social distancing of 2m had to be observed, apart from in respect of people living in the same household.

The claim form and particulars of claim were issued and posted on 25 September 2021, which meant that the deemed date of service was 27 September 2021. Your client's Acknowledgement of Service was therefore due on or before 9 October 2021. By 10 October 2021, your client had not filed an Acknowledgment of Service. The Claimant therefore applied for judgment in default on 15 October 2021. This was granted by Senior Master Harvest on 17 October 2021.

Julie Barnes has approached you and asked for you to write a letter of advice to Tremurs Ltd explaining what a Default Judgment is, how a Judgment may be obtained and whether you believe that it will be possible to apply for the Judgment to be set aside.

Write the body of a letter to Tremurs Ltd providing advice on Default Judgments.</td></tr>
<tr><td colspan="2">Total Marks Attainable</td><td>20</td></tr>
<tr><td colspan="3"></td></tr>
</table>

Fail	up to 9.9	This mark should be awarded to candidates whose papers fail to address any of the requirements of the question, or only touch on some of the more obvious points without dealing with them or addressing them adequately.
Pass	10+	An answer which addresses MOST of the following points: Definitions and salient points in respect of default judgments, consideration of what default judgment is, how it can be obtained and the consequence. Candidates will demonstrate a good depth of knowledge of the subject (i.e. a good understanding of the civil procedure rules concerning default judgments) with good application and some analysis having regard to the facts, although candidates may demonstrate some areas of weakness.
Merit	12+	An answer which addresses ALL of the points required for a pass AND most of the following points: how an application should be made to have a default judgment set aside, what the court will consider when determining whether the default judgments should be set aside, relief from sanctions applications and rules. Candidates will demonstrate a very good depth of knowledge of the subject (i.e. a good understanding of the relevant civil procedure rules) with good application and some analysis having regard to the facts, although candidates may demonstrate some areas of weakness.
Distinction	14+	An answer which includes ALL the requirements for a pass and merit (as set out above) PLUS the candidates' answers should demonstrate a deep and detailed knowledge of law in this area and an ability to deal confidently with relevant principles. Candidates will provide an excellent advice setting out when summary judgment will be obtained and the provisions around such an order. All views expressed by candidates should be supported by relevant authority and/or case law. Work should be written to an exceptionally high standard taking into consideration that it is written in exam conditions.

Required: Candidate should set out that an application should be made for Default Judgment under Part 12 Civil Procedure Rules (CPR), e.g ***May apply:*** Where a defendant does not respond after 14 days, or acknowledges service within 14 days of service, but does not file and serve a defence within 28 days, the claimant can apply for 'judgment by default'. The date of service is determined by the rules set out within the CPR. Default judgment means judgment without trial where a defendant has failed to file an acknowledgment of service; or has failed to file a defence. The claimant may obtain judgment in default of an acknowledgment of service only if at the date on which judgment is entered the defendant has not filed an acknowledgment of service or a defence to the claim (or any part of the claim); and the relevant time for doing so has expired. A default judgment is requested by completing and returning to the court Form N225 - Request for judgment and reply to admission. This form is also used in cases of admissions, considered in the next section. ***Credit reference to any authority cited on occasions when a default judgment may not be obtained or permission may require, e.g:*** CPR 12, CPR 12.1, CPR 12.3(1), CPR PD 12, para 4.1, CPR 6, CPR 10.2, CPR 15.3 and Form N225.	Up to 5 marks A pass must refer to CPR 12 and set out what it means to apply for a default judgment
Could also include a discussion on circumstances when a default judgment may not be obtained or when permission of the court may be needed, e.g: ***May not obtain or may need permission:*** A claimant may not obtain a	Up to 4 marks

default judgment on a claim for delivery of goods subject to an agreement regulated by the Consumer Credit Act 1974; where he uses the procedure set out in Part 8 (alternative procedure for claims); or in any other case where a practice direction provides that the claimant may not obtain default judgment. A default judgment may only be obtained by a claimant with the permission of the court (for which an application under CPR Part 23 will be required) in the following cases: D was served outside the jurisdiction, D is a child or protected party, C seeks costs (other than fixed costs), Tort claims between spouses or civil partners and C wants delivery of goods, not simply damages. ***Credit reference to any authority cited on occasions when a default judgment may not be obtained or permission may require, e.g:*** CPR 12.2 and CPR 12.10.	
Credit a discussion on setting aside a default judgment, e.g: ***Setting aside a default judgment:*** The mandatory grounds, upon which the court must set the judgment aside are that the defendant has filed an admission with request for time to pay, the defendant had applied for summary judgment against the claimant, the claim was satisfied before judgment or the defendant has complied with the rules. In any other case, the court may set aside or vary a judgment entered under Part 12 if the defendant has a real prospect of successfully defending the claim; or it appears to the court that there is some other good reason why the judgment should be set aside or varied; or the defendant should be allowed to defend the claim. ***Credit reference to any authority cited on setting aside a default judgment, e.g:*** CPR 13.2 and CPR 13.3. ***Prompt application:*** A lack of promptness is a factor for the court to consider when deciding whether to set aside a default judgment. However a lack of promptness (and even a positive decision not to act promptly) does not prevent the court setting a judgment aside if the defendant can show a real prospect of successfully defending the claim. Recently, it was stated that it would be 'unconscionable' for the claimant to benefit from the Covid-19 crisis. ***Credit reference to any authority cited on making a prompt application, e.g:*** Page v Champion Financial Ltd [2014], Gentry v Miller [2016] and Stanley v London Borough Tower Hamlets [2020]. ***Relief from sanctions:*** On an application for relief from any sanction imposed for a failure to comply with any rule, practice direction or court order, the court will consider all the circumstances of the case, so as to enable it to deal justly with the application. There is a three-stage approach to addressing applications for relief from sanctions: the court should identify and assess the seriousness and significance of the failure to comply with any rule, practice direction or court order,	Up to 10 marks To achieve more than a pass a candidate must not simply cite the rules but should show a deeper understanding of the rules including an appreciation of the approach the court will take to an application to set aside a DJ

the court should consider why the default occurred and the court should evaluate all of the circumstances of the case so as to deal with the case justly. An application for relief from sanctions must be supported by evidence. Applications will normally be made under CPR 23, with a supporting witness statement. ***Credit reference to any authority cited on making an application for relief from sanctions prompt application, e.g:*** Regione Piemonte v Dexia Crediop Spa [2014], Michele Robinson v Royal Borough of Kensington and Chelsea [2016], Gentry v Miller [2016], Denton v TH White [2014], CPR 3.9(1), CPR 3.9(2) and CPR 23.	
Credit a discussion on making an application to set aside a default judgment, e.g: ***Making an application:*** Under CPR 23 an application notice means a document in which the applicant states his intention to seek a court order and respondent means the person against whom the order is sought and such other person as the court may direct. The general rule is that a copy of the application notice must be served on each respondent. An application may be made without serving a copy of the application notice if this is permitted by a rule a practice direction or a court order. An application notice must state what order the applicant is seeking and briefly, why the applicant is seeking the order. A copy of the application notice must be served as soon as practicable after it is filed and except where another time limit is specified in these Rules or a practice direction, must in any event be served at least 3 days before the court is to deal with the application. When a copy of an application notice is served it must be accompanied by a copy of any written evidence in support and a copy of any draft order which the applicant has attached to his application. ***Credit reference to any authority cited on the application, e.g:*** CPR 23.1, CPR 23.4(1), CPR 23.4(2), CPR 23.6, CPR 23.7(1) and CPR 23.7(3).	Up to 5 marks

Question 6:	You work as a Trainee Costs Lawyer in-house at Ferguson and Hewitt. Your firm is acting for the Defendant in proceedings, Mr Pablo Perez, in respect of a claim that was issued in the County Court at Manchester on 12 December 2020. The Claimant, Sylvia Smith, was claiming between £1,000 and £10,000 damages for pain, suffering and loss of amenity allegedly suffered as a result of a slipping accident, which it was said had occurred at the El Celler De Can Roca restaurant,

	which is owned and run by your client. The claim had been allocated to the fast track and the trial before District Judge Mister was on 3 November 2021. The Court heard evidence from the Claimant herself and also from Betty Williams, who claimed to have been lunching with the Claimant at the time she sustained her alleged injury. The District Judge also heard evidence from two witnesses for the Defendant who were working in the restaurant on the day of the alleged accident. The claim was dismissed because the District Judge was not satisfied that Sylvia Smith slipped while she was leaving the restaurant. He reached that conclusion because the evidence was so riddled with inconsistencies and when he tested that evidence against objective contemporaneous evidence, it led him to conclude that he could not rely on anything that Sylvia Smith and Betty Williams said in relation to the circumstances giving rise to the claim. The District Judge also disapplied the protection afforded to claimants in personal injury cases by the qualified one-way costs shifting provisions contained within the Civil Procedure Rules. It is this element of the decision that you have been asked to advise. Write the body of a letter to Mr Pablo Perez advising when a Claimant is entitled to the protection of QOCS, in what situation that protection may be lost and the consequence of the decision made by District Judge Mister.
Total Marks Attainable	20

Fail	up to 9.9	This mark should be awarded to candidates whose papers fail to address any of the requirements of the question, or only touch on some of the more obvious points without dealing with them or addressing them adequately.
Pass	10+	An answer which addresses MOST of the following points: an explanation as to how QOCs operates, which cases the rules apply to, when an order can be enforced without the courts permission, to what extent an order can be enforced and when an order can be enforced only with the court's permission. Candidates will demonstrate a good depth of knowledge of the subject (i.e. a good understanding of the legislative framework around) with good application and some analysis having regard to the facts, although candidates may demonstrate some areas of weakness.
Merit	12+	An answer which addresses ALL of the following points required for a pass AND most of the following points: the impact where a claim has been struck out, the impact where there has been a finding of fundamental dishonesty, the impact where the claim involves an element for another person and mixed claims. Candidates will demonstrate a very good depth of knowledge of the subject (i.e. a good understanding of the legislative framework) with good application and some analysis having regard to the facts, although candidates may demonstrate some areas of

		weakness.
Distinction	14+	An answer which includes ALL the requirements for a pass and merit (as set out above) PLUS the candidates' answers should demonstrate a deep and detailed knowledge of law in this area and an ability to deal confidently with relevant principles. All views expressed by candidates should be supported by relevant authority and/or case law. Work should be written to an exceptionally high standard taking into consideration that it is written in exam conditions.

Fail = 0-9.9
Pass = 10+
Merit = 12+
Distinction = 14+

Indicative Content:	**Marks**
Required: Candidates are required to explore what QOCS is: ***QOCS and the court's discretion:*** QOCS limits the circumstances in which such costs orders can be enforced and provides for circumstances where they can be enforced with or without court permission. The Court retains discretion as to costs and QOCS does not impact this. The normal rule that the losing party to litigation is ordered to pay the winning party's costs is not displaced by QOCS. Where costs are ordered against a claimant, this may be on a standard or indemnity basis and may be subject to a summary or detailed assessment. ***Credit reference to any authority cited on QOCS and the court's discretion, e.g:*** CPR 44.2(1), CPR 44.2(2)(a) and CPR PD 44, para 12.7.	Up to 2 marks
Credit reference to any relevant point to describe where QOCS does/doesn't apply, e.g: ***QOCS applies:*** QOCS applies to personal injury and fatal accidents claims both under the Fatal Accidents Act 1976 and under section 1(1) of the Law Reform (Miscellaneous Provisions) Act 1934. QOCS will not apply to applications for pre-action disclosure. QOCs will not apply where the claimant had entered into a 'pre-commencement funding arrangement'. A pre-commencement funding arrangement is essentially a CFA entered into before 1 April 2013. ***Credit reference to any authority cited in relation to when QOCS applies, e.g:*** CPR 44.13, CPR 44.17, CPR 48, Wagenaar v Weekend Travel Ltd (trading as Ski Weekend) & Serradj [2014], Catalano v Espley-Tyas Development Group [2017], Price v Egbert Taylor & Co. [2016] and Landau v Big Bus Co Ltd [2014].	Up to 3 marks
Credit reference to any relevant point to describe the enforcement of costs orders, under CPR 44.14, where QOCS applies, e.g: ***Enforcement up to the extent of damages without the court's permission:*** Orders can be enforced to the extent that the amount of the costs does not exceed the damages awarded to the claimant. The	Up to 4 marks

court's permission is not required. This covers a situation where a claimant fails to beat a defendant's Part 36 offer. May only be enforced after the proceedings have been concluded and the costs have been assessed or agreed. ***Credit reference to any authority cited in relation to enforcement up to the extent of damages without the court's permission, e.g:*** CPR 44.14(1), CPR 36 and CPR 44.14 (2).	
Credit any relevant point made in relation to enforcing an order when a claim has been struck out, e.g: ***Struck out:*** Orders can be enforced where proceedings are struck out because there were no reasonable grounds for bringing the proceedings, there is an abuse of process or the conduct of the claimant (or a person acting on his behalf with his knowledge) is likely to obstruct the just disposal of the proceedings. There have been cases where a claimant may have discontinued and the defendant has applied to have the discontinuance set aside however the court have made clear that the claimant has the right to discontinue. It has also been highlighted that there is a potential lacuna in the rules because where a defendant is outside of the jurisdiction the court do not have the power to strike out a claim but must set it aside, in these circumstances the defendant would be unable to enforce their costs against the claimant. ***Credit reference to any authority cited in relation to enforcement when a claim has been struck out, e.g:*** CPR 44.15, Wall v British Canoe Union [2015], Brahilka v Allianz Insurance, Reckitt Benckiser (UK) Ltd v Home Pairfum Ltd [2004], Kite v Phoenix Pub Group [2015] and Shaw v Medtronic Corevalve LLC and others [2017].	Up to 4 marks
Credit any relevant point made in relation to enforcing an order where there is a finding of fundamental dishonesty, e.g: ***Fundamental dishonesty:*** Costs orders against claimants can be enforced to their full extent only with court permission where the claim is found, on the balance of probabilities, to be fundamentally dishonest. The orders against claimants can be enforced to their full extent only with court permission. An exaggeration of symptoms may be fundamental dishonesty but it isn't always the case and will be fact dependant. Fundamental dishonesty is a two stage test, firstly is there dishonesty and secondly is it fundamental to the claim. It is not necessary for the defendant to raise fundamental dishonesty in their defence. **Credit reference to any authority cited on enforcement where there is a finding of fundamental dishonesty, e.g:** CPR 44.16(1), CPR 44.16(3), Menary v Darnton [2016], Gosling v Hailo and Screwfix Direct [2014], Zurich Insurance v Bain [2015], Wagett v Witold [2015] and Howlett v Davies [2017].	Up to 4 marks

Credit any relevant point made in relation to enforcing an order where the claim may include an element for another or is a mixed claim, e.g: ***Involving another person:*** Where the proceedings include a claim which is made for the financial benefit of a person other than the claimant or a dependant within the meaning of section 1(3) of the Fatal Accidents Act 1976 (other than a claim in respect of the gratuitous provision of care, earnings paid by an employer or medical expenses) the orders against claimants can be enforced to their full extent only with court permission. ***Mixed claims:*** Costs orders against claimants can be enforced to their full extent providing the court has given permission where the claim includes a claim for financial benefit unrelated to personal injury either for the claimant or for another party. This part therefore gives the court the power to deny a claimant QOCS protection in a claim, for example, which is primarily a property damage claim but which includes a personal injury claim. Examples of such claims are subrogated claims and claims for credit hire. In mixed claims cases the starting point will be that claimants have QOCs protection but that is only the starting point. ***Credit reference to any authority cited on where a claim may include an element for another or is a mixed claim, e.g:*** CPR 44.16(2)(a), CPR 44.16(2)(b), CPR 44.16(3), CPR PD 44, para 12.2, Howlett and Howlett v Davies and Ageas [2017], Jeffreys v Commissioner of Police for the Metropolis [2017] and Brown v Commissioner of Police of the Metropolis & Anor [2019].	Up to 5 marks
Credit any relevant point to describe set-off of costs orders, e.g: ***Set off:*** Where a party entitled to costs is also liable to pay costs, the court may assess the costs which that party is liable to pay and either set off the amount assessed against the amount the party is entitled to be paid and direct that party to pay any balance; or delay the issue of a certificate for the costs to which the party is entitled until the party has paid the amount which that party is liable to pay. The defendant is unable to set off costs against the claimants costs but may against the claimant's damages where those damages were awarded in an order. ***Credit reference to any authority cited on set off, e.g:*** CPR 44.12(1), Howe v Motor Insurers' Bureau [2017], Faulkner v Secretary of State for Energy and Industrial Strategy [2020], Ho v Adelekun (no.2) [2020] and Jeffrey Cartwright v Venduct Engineering Limited [2018] and Ho v Adelekun [2021].	Up to 1 mark

Question 7:	You work in-house as a Costs Lawyer for a firm of solicitors. You have previously prepared the bill of costs in the matter of Mr David Deane, the Claimant in a breach of contract matter. Mr Deane successfully sued a local taxi firm for the sum of £30,000

	owed for fitting a number of computers in the firm's office. Your opponent is Miss Lena Grace. She is not an authorised person but is instructed by the firm that represented the owner of the taxi firm. It is apparent from several phone calls with Miss Grace that the Defendant has asked her to raise an issue with every item in the bill and make lengthy disputes. Furthermore, she has advised you "off the record" that the Defendant has indicated that he is in possession of some documents which would probably assist your client but intends to dispose of these. She says that the Defendant has already lost a significant amount of money and feels he has nothing to lose. You have pointed out to her that the Court will not take a favourable view of this conduct. Her response was that she would, of course, say that she had no knowledge. You have considered the file and are of the view that, on the whole, the file was well run and the costs claim is broadly reasonable. You are hoping that by writing a letter to your opponent she will re-consider her stance and deal with the matter in a proper fashion, so that you are able to reach an amicable settlement without incurring unnecessary expense on both sides. Prepare the body of a letter to Miss Grace, in appropriate business language, attempting to persuade her to deal with the matter in a proper fashion. You should set out why it will be in the interests of all parties involved that she deals with the matter in an ethical manner and should have regard to relevant principles of professional standards.
Total Marks Attainable Fail = 0-9.9 Pass = 10+ Merit = 12+ Distinction = 14+	20

Fail	up to 9.9	An answer which deals with the basic requirements of the question, but in dealing with those requirements only does so superficially and does not address, as a minimum, all the criteria expected of a pass grade (set out in full below). The answer will only demonstrate an awareness of some of the more obvious issues. The answer will be weak in its presentation of points and its application of the law to the facts.
Pass	10+	An answer which addresses MOST of the following points: an outline of how the legal profession is regulated, an outline of the relevant professional conduct rules which govern a costs lawyer, an outline of the relationship between a solicitor and the instruction of a costs professional, the duty to the court of advocates and the potential consequence of misleading the court and liability.

Merit	12+	An answer which includes ALL the requirements for a Pass (as set out above) PLUS candidates will demonstrate a very good depth of knowledge of the subject (i.e. a very good understanding of the personal liability of a legal representative, including costs lawyers) with very good application and some analysis having regard to the facts. Most views expressed by candidates should be supported by relevant authority and/or case law.
Distinction	14+	An answer which includes ALL the requirements for a Pass (as set out above) PLUS candidates' answers should demonstrate a deep and detailed knowledge of law in this area and an ability to deal confidently with relevant principles. Work should be written to an exceptionally high standard with few, if any, grammatical errors or spelling mistakes etc.

Indicative Content	**Marks**
Required: Candidates must explain the legislative framework governing the regulation of lawyers and reserved legal activities, e.g: ***Regulation of lawyers:*** An authorised persons is a person, or company, who is authorised to undertake reserved legal activities by an approved regulator. An approved regulator is a body which is designated as an approved regulator by Schedule 4 of the LSA 07. ACL is the approved regulator of Costs Lawyers. A Memorandum of Understanding between ACL and the CLSB delegates the regulatory function to the CLSB. This is similar to the relationship between the SRA and Law Society, the SRA regulate solicitors and SRA regulated firms. Reserved legal activities include the exercise of rights of audience, the conduct of litigation and the administration of oaths. ***Credit reference to any authority cited on the regulation of lawyers, e.g:*** Section 18 of the Legal Services Act 2007, Section 20 of the Legal Services Act 2007, Section 20(5) of the Legal Services Act 2007, Schedule 4 of the Legal Services Act 2007, Section 12 of the Legal Services Act 2007, Sch 2 of the Legal Services Act 2007. ***Reserved legal activities:*** Any question of entitlement to undertake reserved legal activities is determined solely in accordance with the LSA 07. A person is entitled to carry on a reserved legal activity where that person is authorised in relation to the activity in question. If a person is not authorised, they may still be entitled to carry out a reserved legal activity if they are an "exempt person" in relation to the activity. Costs Lawyers must adhere to CLSB code of Conduct. Breach will result in disciplinary proceedings by CLSB. An individual who is not authorised by the CLSB, but who is a manager or employee of an authorised person, is also considered a regulated person under the LSA and must comply with all relevant regulatory arrangements. ***Credit reference to any authority cited on undertaking reserved legal activities, e.g:*** Section 13(1) of the Legal Services Act 2007, Section 13(2)(a) of the Legal Services Act 2007, Section 13(2)(b) of the Legal Services Act 2007, Section 176(1) of the LSA 2007, Section 176(2)(b) of the LSA 2007.	Up to 8 marks
Credit discussion of the costs lawyer's duty to the court, e.g:	Up to 6 Marks

Costs Lawyer's duty to the court: A regulated costs lawyer must comply with your duty to the court in the administration of justice. Costs Lawyers must at all times act within the law and must not knowingly or recklessly either mislead the court or allow the court to be misled. Costs Lawyers must comply with any court order which places an obligation on them and they must not be in contempt of court. Costs Lawyers must advise clients to comply with court orders made against them. Costs Lawyers must act in the best interests of your client. They must act at all times to ensure the client's interest is paramount except where this conflicts with your duties to the court or where otherwise permitted by law. You must decline to act if it would not be in the client's best interests or if that client's interests conflict directly with your own or with those of another client. ***Credit reference to any authority cited on the Costs Lawyer's duty to the court, e.g:*** CLSB Code of Conduct Principle 2, CLSB Code of Conduct Principle 2.1, CLSB Code of Conduct Principle 2.2, CLSB Code of Conduct Principle 2.3, CLSB Code of Conduct Principle 2.4, CLSB Code of Conduct Principle 3 and CLSB Code of Conduct Principle 3.1. ***Advocate's duty to the court:*** It is the duty of an advocate to draw the judge's attention to authorities that are in point, even if they are adverse to that advocate's case. If a point is not properly arguable, it should not be argued. ***Credit reference to any authority cited on the advocates's duty to the court, e.g:*** Copeland v Smith [2002] and Buxton v Mills-Owens [2010].	
Credit discussion on the instruction of a non regulated costs professional, e.g: ***Nonregulated professional:*** The court is able to hear from any person to whom it grants permission to be heard. The solicitors are responsible for the conduct of the detailed assessment proceedings and cannot avoid that responsibility merely by instructing a costs draftsman. Costs draftsmen can appear on behalf of the party only as a duly authorised representative of the solicitor who has instructed him to be there. Work undertaken by independent costs draftsmen could be treated as part of the instructing solicitor's profit costs such as to attract a success fee. The costs draftsman has the same authority as the solicitor would have had to consent to orders. ***Credit reference to any authority cited on instructing a non regulated costs professional, e.g:*** Legal Services Act 2007, Sch 3, Ahmed v Powell [2003], Crane v Canons Leisure Centre [2007], Waterson Hicks v Eliopoulos [1997].	Up to 4 Marks

Credit discussion on the liability of an advocate for example in negligence or wasted costs orders, e.g: ***Negligence:*** The fact is that the advocate, like other professional men, undertaking a duty to his client to conduct his case, subject to the rules and ethics of his profession, with proper skill and care. The principle that an advocate is liable to his client for professional negligence should not stifle the manner in which they conduct litigation and advise their clients. This might lead to defensive advocacy, where barristers would hedge their opinions with qualifications and be reluctant to give clients the advice which they require in their best interests. ***Credit reference to any relevant authority cited on negligence, e.g:*** Rondel v Worsley [1967], Arthur J S Hall & Co v Simmons [2007] and Moy v Pettmann Smith (A Firm) & Anor [2005]. ***Wasted costs:*** The court shall have full power to determine by whom and to what extent the costs are to be paid. The court may disallow or order the legal or other representative concerned to meet, the whole of any wasted costs or such part of them as may be determined in accordance with rules of court. Where the court orders a legal representative to pay wasted costs it must inform an approved regulator or the Director of Legal Aid Casework as it considers appropriate. ***Credit reference to any relevant authority cited on wasted costs, e.g:*** Section 51(3) of the Senior Courts Act 1981, Section 51(6) of the Senior Courts Act 1981 and Section 51(7A) of the Senior Courts Act 1981 ***Making the Order:*** The court will give the legal representative a reasonable opportunity to make written submissions or, if the legal representative prefers, to attend a hearing before it makes such an order. When the court makes a wasted costs order, it will specify the amount to be disallowed or paid or direct a costs judge or a district judge to decide the amount of costs to be disallowed or paid. ***Credit reference to any relevant authority cited on making an order, e.g:*** CPR 46.8(1), CPR 46.8(2), CPR 46.8(3)(a) and CPR 46.8(3)(b).	Up to 6 Marks To achieve a distinction candidates should demonstrate a sound ability to apply the law to the facts of the scenarios presented.

Question 8:	You are working for a firm of Costs Lawyers in Leeds. You have recently been instructed by Mr Edgar John, who had

	previously been acting as a Litigant in Person. Recently Mr John’s work commitments have increased and he has decided he would benefit from professional representation. Whilst he believes that he has been doing a good job himself, he has funds and has decided that instructing your firm will save him some time. Upon meeting with him in a Conference at your firm’s offices, it rapidly becomes clear that Mr John is very forthright in his views and his expectations may be difficult to manage. At the very first interlocutory hearing, Mr John’s opponent won on a technical point. Your view is that it could have gone the other way, but that the decision was certainly well within the bounds of fairness. However, Mr John has thereafter made repeated Applications to overturn this decision. He argued that the Judge conspired to favour his opponent. Upon being refused Leave, he sought to Appeal to the Court of Appeal. The appeal was, again, based on the allegations of conspiracy. Mr John’s opponent now has a Final Costs Order against Mr John. Mr John has therefore now instructed you to conduct the Detailed Assessment on his behalf, but he is insistent that you must argue his conspiracy theory, which you believe to be both ridiculous in the extreme and an abuse of the Court process. The firm has therefore asked you to produce a file note explaining the implications for you as a Costs Lawyer if you do what is asked. Write the body of a file note setting out the Costs Lawyers duty to the Court, the professional conduct rules that prohibit you from arguing unarguable points and the implications if you act on Mr John’s current instructions.
Total Marks Attainable Fail = 0-9.9 Pass = 10+ Merit = 12+ Distinction = 14+	20

Fail	up to 9.9	An answer which deals with the basic requirements of the question, but in dealing with those requirements only does so superficially and does not address, as a minimum, all the criteria expected of a pass grade (set out in full below). The answer will only demonstrate an awareness of some of the more obvious issues. The answer will be weak in its presentation of points and its application of the law to the facts.

Pass	10+	An answer which addresses MOST of the following points: An outline of what it means to be an authorised person, an explanation of the costs lawyers duty to the court, an explanation of what a reserved legal activity is and whether this work can be undertaken by non-qualified costs professionals. Candidates should identify the relevant issues in the case and deal with the circumstances in their advice.
Merit	12+	An answer which includes ALL the requirements for a Pass (as set out above) PLUS candidates will demonstrate a very good depth of knowledge of the subject (i.e. a very good understanding of authorised persons/reserved legal activities) with very good application and some analysis having regard to the facts. Most views expressed by candidates should be supported by relevant authority and/or case law.
Distinction	14+	An answer which includes ALL the requirements for a Pass (as set out above) PLUS candidates' answers should demonstrate a deep and detailed knowledge of law in this area and an ability to deal confidently with relevant principles. Work should be written to an exceptionally high standard with few, if any, grammatical errors or spelling mistakes etc.

Indicative Content	**Marks**
Required: Candidates must explain the legislative framework governing the regulation of lawyers and reserved legal activities, e.g: ***Regulation of lawyers:*** An authorised persons is a person, or company, who is authorised to undertake reserved legal activities by an approved regulator. An approved regulator is a body which is designated as an approved regulator by Schedule 4 of the LSA 07. ACL is the approved regulator of Costs Lawyers. A Memorandum of Understanding between ACL and the CLSB delegates the regulatory function to the CLSB. This is similar to the relationship between the SRA and Law Society, the SRA regulate solicitors and SRA regulated firms. Reserved legal activities include the exercise of rights of audience, the conduct of litigation and the administration of oaths. ***Credit reference to any authority cited on the regulation of lawyers, e.g:*** Section 18 of the Legal Services Act 2007, Section 20 of the Legal Services Act 2007, Section 20(5) of the Legal Services Act 2007, Schedule 4 of the Legal Services Act 2007, Section 12 of the Legal Services Act 2007, Sch 2 of the Legal Services Act 2007. ***Reserved legal activities:*** Any question of entitlement to undertake reserved legal activities is determined solely in accordance with the LSA 07. A person is entitled to carry on a reserved legal activity where that person is authorised in relation to the activity in question. If a person is not authorised, they may still be entitled to carry out a reserved legal activity if they are an "exempt person" in relation to the activity. Costs Lawyers must adhere to CLSB code of Conduct. Breach will result in disciplinary proceedings by CLSB. An individual who is not authorised by the CLSB, but who is a manager or employee of an authorised person, is also considered a regulated person under the LSA and must comply with all relevant regulatory arrangements. ***Credit reference to any authority cited on undertaking reserved legal activities, e.g:*** Section 13(1) of the Legal Services Act 2007, Section 13(2)(a) of the Legal Services Act 2007, Section 13(2)(b) of the Legal	Up to 8 marks An explanation should be given as to what it means to be an authorised person

Services Act 2007, Section 176(1) of the LSA 2007, Section 176(2)(b) of the LSA 2007.	
Credit discussion of the costs lawyer's duty to the court, e.g: ***Costs Lawyer's duty to the court:*** A regulated costs lawyer must comply with your duty to the court in the administration of justice. Costs Lawyers must at all times act within the law and must not knowingly or recklessly either mislead the court or allow the court to be misled. Costs Lawyers must comply with any court order which places an obligation on them and they must not be in contempt of court. Costs Lawyers must advise clients to comply with court orders made against them. Costs Lawyers must act in the best interests of your client. They must act at all times to ensure the client's interest is paramount except where this conflicts with your duties to the court or where otherwise permitted by law. You must decline to act if it would not be in the client's best interests or if that client's interests conflict directly with your own or with those of another client. ***Credit reference to any authority cited on the Costs Lawyer's duty to the court, e.g:*** CLSB Code of Conduct Principle 2, CLSB Code of Conduct Principle 2.1, CLSB Code of Conduct Principle 2.2, CLSB Code of Conduct Principle 2.3, CLSB Code of Conduct Principle 2.4, CLSB Code of Conduct Principle 3 and CLSB Code of Conduct Principle 3.1. ***Advocate's duty to the court:*** It is the duty of an advocate to draw the judge's attention to authorities that are in point, even if they are adverse to that advocate's case. If a point is not properly arguable, it should not be argued. ***Credit reference to any authority cited on the advocates's duty to the court, e.g:*** Copeland v Smith [2002] and Buxton v Mills-Owens [2010].	Up to 6 marks
Credit a discussion on the CLSB Practising Rules, e.g: ***The CLSB Practising Rules:*** These Rules govern the practice of Costs Lawyers and the issue and revocation of practising certificates by the CLSB. No person shall be entitled to practise as a Costs Lawyer unless they have qualified as a Costs Lawyer in accordance with the Training Rules, they have a current Practising Certificate which has been issued in accordance with these Rules and which is not suspended and they comply with CPD requirements set out in the CPD Rules. An applicant or Costs Lawyer must disclose certain information when making an application for a Practising Certificate or throughout the lifetime of a Practising Certificate. This includes criminal convictions. A Practising Certificate may be revoked by the CLSB. Costs Lawyers must ensure that they have professional indemnity insurance. ***Credit reference to any authority cited on the CLSB Practising Rules, e.g:*** Rule 1 of the CLSB Practising Rules, Rule 4 of the CLSB Practising Rules, Rule 8 of the CLSB Practising Rules and Rule 10 of the CLSB Practising	Up to 6 Marks

Rules.	
Credit discussion on the liability of an advocate for example in negligence or wasted costs orders, e.g: ***Negligence:*** The fact is that the advocate, like other professional men, undertaking a duty to his client to conduct his case, subject to the rules and ethics of his profession, with proper skill and care. The principle that an advocate is liable to his client for professional negligence should not stifle the manner in which they conduct litigation and advise their clients. This might lead to defensive advocacy, where barristers would hedge their opinions with qualifications and be reluctant to give clients the advice which they require in their best interests. ***Credit reference to any relevant authority cited on negligence, e.g:*** Rondel v Worsley [1967], Arthur J S Hall & Co v Simmons [2007] and Moy v Pettmann Smith (A Firm) & Anor [2005]. ***Wasted costs:*** The court shall have full power to determine by whom and to what extent the costs are to be paid. The court may disallow or order the legal or other representative concerned to meet, the whole of any wasted costs or such part of them as may be determined in accordance with rules of court. Where the court orders a legal representative to pay wasted costs it must inform an approved regulator or the Director of Legal Aid Casework as it considers appropriate. ***Credit reference to any relevant authority cited on wasted costs, e.g:*** Section 51(3) of the Senior Courts Act 1981, Section 51(6) of the Senior Courts Act 1981 and Section 51(7A) of the Senior Courts Act 1981 ***Making the Order:*** The court will give the legal representative a reasonable opportunity to make written submissions or, if the legal representative prefers, to attend a hearing before it makes such an order. When the court makes a wasted costs order, it will specify the amount to be disallowed or paid or direct a costs judge or a district judge to decide the amount of costs to be disallowed or paid. ***Credit reference to any relevant authority cited on making an order, e.g:*** CPR 46.8(1), CPR 46.8(2), CPR 46.8(3)(a) and CPR 46.8(3)(b).	Up to 4 Marks

Question 9:	You work at an SRA regulated firm in the Costs and Accounts Department. Your firm have been instructed by Mr Timothy Hotlace, a solicitor, who is facing a number of allegations that have been made by the SRA. The allegations against the Mr Hotlace are that while in sole practice as a solicitor at Hotlace-Law, on multiple occasions between November 2017 and May 2021, he caused or allowed monies to be paid into or out of the Firm's client accounts, other than in respect of an underlying legal transaction or a service forming part of the normal regulated activities of solicitors. It is also alleged that from around November 2017he failed to establish the sources of funds received into the client account in relation to a number of entities and he received and transferred funds from a number of third parties without undertaking any or adequate steps to verify the identity of the payers, or properly scrutinise such transactions. You have been asked to produce a file note on the potential ramifications for Mr Hotlace. The file note needs to cover why Hotlace-Law should be able to show a reasonable connection between the underlying legal transaction for which they have been instructed to advise on with any funds the firm are asked to hold, or payments the firm are asked to make. The file note also needs to cover the requirement for Hotlace-Law to undertake proper due diligence before accepting any funds into a client account and why the firm should have declined to act if they did not fully understand the transaction on which they were being asked to advise. Prepare the body of the file note that covers the risks associated with the use of client accounts and the potential ramifications for Mr Hotlace.
Total Marks Attainable	20

Fail	up to 9.9	An answer which deals with the basic requirements of the question, but in dealing with only does so superficially and does not address, as a minimum, all the criteria expected of a pass grade (set out in full below). The answer will only demonstrate an awareness of some of the more obvious issues. The answer will be weak in its presentation of points and its application of the law to the facts. There will be little evidence that candidates have any understanding of the regulatory framework governing client accounts and money laundering.
Pass	10+	An answer which addresses MOST of the following points: A definition of money laundering, an explanation of what money laundering is, identification of the relevant legislation/regulations, an outline of the due diligence requirements and the principle offences. Some key authority should be included, but this may not be specifically applied or only superficially.

Merit	12+	An answer which includes ALL the requirements for a Pass (as set out above) PLUS candidates will demonstrate a very good depth of knowledge of the subject (i.e. a very good understanding of the operation of the money laundering regulations) with very good application to the scenario, i.e recognition that the firm must be SRA regulated and/or an explanation of the relevant governance that a firm must have in place. There will be some analysis having regard to the facts. Most views expressed by candidates should be supported by relevant authority and/or case law.
Distinction	14+	An answer which includes ALL the requirements for a Pass (as set out above) PLUS the candidates' answers should demonstrate a deep and detailed knowledge of law in this area and an ability to deal confidently with relevant principles. All views expressed by candidates should be supported by relevant authority and/or case law throughout. Candidates should be able to show critical assessment and capacity for independent thought on the topics. Work should be written to an exceptionally high standard with few, if any, grammatical errors or spelling mistakes etc.

Fail = 0-9.9
Pass = 10+
Merit = 12+
Distinction = 14+

Indicative Content	**Marks**
Required: Candidates must explain what money laundering is and the legislative framework, e.g: ***Money Laundering:*** Money laundering is "the process by which criminal proceeds are sanitised to disguise their illicit origins". The SRA require individuals and firms respectively to make sure they keep up to date with, and remain aware of, their responsibilities under any new legislation as and when it is introduced. This includes the Money Laundering, Terrorist Financing and Transfer of Funds. These regulations apply to certain categories of persons acting in the course of business carried on in the UK. These regulations apply to independent legal professionals participating in certain financial or real property transactions. ***Credit refence to any authority cited on money laundering and the applicability of the legislative framework, e.g:*** Legal Guidance, Proceeds Of Crime Act 2002 Part 7 - Money Laundering Offences, Paragraph 7.1 of the SRA Code of Conduct for Solicitors, RELs and RFLs, and paragraph 3.1 of the SRA Code of Conduct for Firms, Regulation 8 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 and Regulation 12(1) of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017.	Up to 2 marks To achieve a pass, an explanation should be given as to what money laundering is and the governing legislation
Credit a discussion on the governance, systems and controls a firm should have in place, e.g: ***Systems and controls:*** Firms must take appropriate steps to identify and assess the risks of money laundering and terrorist financing to which its business is subject. They must also keep records of any	Up to 4 marks

identified risks. Firms must establish and maintain policies, controls and procedures to mitigate and manage effectively the risks of money laundering and terrorist financing identified in any risk assessment undertaken by the relevant person. They must review any such policies and maintain records of them. Where appropriate with regard to the size and nature of its business, firms must appoint one individual who is a member of the board of directors (or if there is no board, of its equivalent management body) or of its senior management as the officer responsible for the relevant person's compliance with the Regulations (MLCO). Firms should also appoint a nominated officer, usually referred to as the Money Laundering Reporting Officer (MLRO), to receive internal reports of suspicious activity, and make Suspicious Activity Reports (SARs) to the National Crime Agency where necessary. Firms must provide staff with appropriate training on money laundering and terrorist financing, and keep a record of the training staff have undertaken. This now includes an obligation to make staff aware of the law on data protection, insofar as it is relevant to the implementation of the regulations. ***Credit refence to any authority cited on systems and controls, e.g:*** Regulation 18 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, Regulation 19 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, Regulation 21 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, Regulation 24 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017.	
Credit a discussion on customer due diligence, e.g: ***Due diligence:*** Firms must apply customer due diligence measures if they establish a business relationship; carry out an occasional transaction that amounts to a transfer of funds exceeding 1,000 euros; suspects money laundering or terrorist financing; or doubts the veracity or adequacy of documents or information previously obtained for the purposes of identification or verification. A firm must identify the customer unless the identity of that customer, verify the customer's identity and assess the purpose and intended nature of the business relationship or occasional transaction. Firms may rely on another person (another regulated individual) who is subject to the MLR or equivalent to carry out CDD, but they remain liable for any failings. To rely on a third party, firms must enter into a written agreement with the third party under which they agree to provide copies of any identification and verification data on the customer or its beneficial owner within two working days, and to keep records in accordance with MLRs. ***Credit refence to any authority cited on due diligence, e.g:*** Regulation 27 of the Money Laundering, Terrorist Financing and Transfer of Funds	Up to 10 marks

(Information on the Payer) Regulations 2017, Regulation 28 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 and Regulation 39 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017. ***Enhanced due diligence:*** Under the regulations, enhanced due diligence measures must include, as a minimum, examining the background and purpose of the transaction and increasing the monitoring of the business relationship. The regulations set out a list of circumstances in which enhanced due diligence measures must be applied, which includes any transaction or business relationship involving a person established in a 'high risk third country', any transaction or business relationship involving a 'politically-exposed person', or a family member or known associate of a politically-exposed person and any other situation that presents a higher risk of money laundering or terrorist financing. ***Credit refence to any authority cited on enhanced due diligence, e.g:*** Regulation 33 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 and Regulation 33(1) of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017. ***Simplified due diligence:*** Simplified due diligence is permitted where a firm determines, after individual risk assessment of the client, that the business relationship or transaction presents a low risk of money laundering or terrorist financing, taking into account their risk assessment. ***Credit refence to any authority cited on simplified due diligence, e.g:*** Regulation 37 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017.	
Candidates may discuss the principal money laundering offences, e.g: ***Offences:*** A person will be liable of an offence if he conceals, disguise, converts, transfers or removes criminal property. Concealing or disguising criminal property includes concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it. A person commits an offence if he enters into, or becomes concerned in, an arrangement which he knows or suspects facilitates the acquisition, retention, use or control of criminal property by or on behalf of another person. If a person acquires, uses or possesses property for which he has not given adequate consideration, he may be liable of an offence. It is an offence of participating in an organised crime group into English law. It has the potential to seriously widen the scope of criminal liability for lawyers and other professionals working in the non-regulated sector. It is an offence to be involved in fundraising if you have knowledge or	Up to 8 marks

reasonable cause to suspect that the money or other property raised might be used for terrorist purposes. It is an offence to use or possess money or other property for terrorist purposes, including when you have reasonable cause to suspect the money or property might be used for these purposes. It is an offence to enter into or become concerned in an arrangement facilitating the retention or control of terrorist property by, or on behalf of, another person (unless you did not know, and had no reasonable cause to suspect, that the arrangement related to terrorist property). ***Who may investigate and prosecute offences:*** Money laundering offences are principally investigated by the police, the National Crime Agency (NCA) or HM Revenue & Customs (HMRC), or, if the offence has been committed by an entity in the City of London, the Financial Investigations Unit of the City of London Police. The Crown Prosecution Service usually conducts criminal proceedings. The Serious Fraud Office investigates and prosecutes matters involving serious or complex fraud or corruption. Where the allegations are linked to financial firms, the matter may be investigated or prosecuted by the Financial Conduct Authority (FCA). ***Credit refence to any authority cited on the offences, e.g:*** Section 327 of the Proceeds of Crime Act 2002, Section 328 of the Proceeds of Crime Act 2002, Section 329 of the Proceeds of Crime Act 2002, Section 45 of the Serious Crime Act 2015, Section 15 of the Terrorism Act 2002, Section 16 of the Terrorism Act 2002 and Section 18 of the Terrorism Act 2002.	