June 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:	Outline the relevant procedure to be adopted where a Claimant feels there is no compelling reason for their claim to proceed to a trial and the Defendant has no real prospect of successfully defending the claim or issue.
Total Marks Attainable Fail = 0-4.9 Pass = 5+ Merit = 6+ Distinction = 7+	10
Indicative Content	**Marks**
Required: Candidate should set out the grounds for a summary judgment and the proceedings in which a summary judgment is available, e.g ***Grounds for summary judgment and proceedings in which a summary judgment is available:*** CPR 24 sets out a procedure by which the court may decide a claim or a particular issue without a trial. The court may give summary judgment against a claimant or defendant on the whole of a claim or on a particular issue if it considers that the claimant has no real prospect of succeeding on the claim or issue or the defendant has no real prospect of successfully defending the claim or issue; and there is no other compelling reason why the case or issue should be disposed of at a trial. The court may give summary judgment against a claimant in any type of proceedings. The court may give summary judgment against a defendant in any type of proceedings except proceedings for possession of residential premises (against a mortgagor; or a tenant or a person holding over after the end of his tenancy whose occupancy is protected within the meaning of the Rent Act 1977 or the Housing Act 1988) and proceedings for an admiralty claim in rem. ***Credit reference to any authority cited on grounds for summary judgment and proceedings in which a summary judgment is available, e.g:*** CPR 24.1, CPR 24.2, CPR 24.3(1) and CPR 24.3(2).	Up to 2 marks A pass must refer to CPR 24 and set out what it means to apply for a summary judgment
Credit any relevant point to explain the procedure, e.g:	Up to 5 marks

Procedure applicable to summary judgments: A claimant may not apply for summary judgment until the defendant against whom the application is made has filed an acknowledgement of service or a defence. This is unless the court gives permission; or a practice direction provides otherwise. Where a summary judgment hearing is fixed, the respondent (or the parties where the hearing is fixed of the court's own initiative) must be given at least 14 days' notice of the date fixed for the hearing and the issues which it is proposed that the court will decide at the hearing. ***Credit reference to any authority cited on the procedure applicable to summary judgments, e.g:*** CPR 24.4(1) and CPR 24.4(3). ***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).	A pass must refer to CPR 24 and set out what it means to apply for a summary judgment
Could also include a discussion on the evidence required for the purpose of a hearing and the power of the court, e.g: ***Evidence for the purposes of a summary judgment hearing:*** If the respondent to an application for summary judgment wishes to rely on written evidence at the hearing, he must file the written evidence and serve copies on every other party	Up to 5 marks To achieve more than a pass a candidate must not simply cite the rules but should show a deeper

to the application, at least 7 days before the summary judgment hearing. If the applicant wishes to rely on written evidence in reply, he must file the written evidence and serve a copy on the respondent, at least 3 days before the summary judgment hearing. ***Credit reference to any authority cited on the evidence for the purposes of a summary judgment hearing, e.g:*** CPR24.5(1) and CPR24.5(2). ***Court's powers when it determines a summary judgment application:*** When the court determines a summary judgment application it may give directions as to the filing and service of a defence and give further directions about the management of the case. When dealing with an application under CPR 24 it does not involve the court conducting a mini trial and the criteria that the court needs to apply is not one of probability but is an absence of reality. ***Credit reference to any authority cited on the court's powers when it determines a summary judgment application, e.g:*** CPR 24.6, Swain v Hillman [2001] and Three Rivers District Council v Bank of England (No. 3) [2001].	understanding of the rules including an appreciation of the approach the court will take to an application for a SJ
Credit a discussion on the costs consequences of such an application, e.g: ***CPR 45.1(1):*** This section sets out the amounts which, unless the court orders otherwise, are to be allowed in respect of legal representatives' charges. ***CPR 45.1 (2) (a)(i):*** This section applies where summary judgment is obtained. ***CPR 45.1 (3):*** No sum in respect of legal representatives' charges will be allowed where the only claim is for a sum of money or goods not exceeding £25. ***CPR 45.1 (4):*** Any appropriate court fee will be allowed in addition to the costs set out in this Section. ***CPR 45.1 (5):*** The claim form may include a claim for fixed commencement costs. ***CPR 45.2:*** Amount of fixed commencement costs in a claim for the recovery of money or goods ***CPR 45.2 (1):*** The amount of fixed commencement costs in a claim will be calculated by reference to Table 1; and the amount claimed, or the value of the goods claimed if specified, in the claim	Up to 2 marks

form is to be used for determining the band in Table 1 that applies to the claim. ***CPR 45.2 (2):*** The amounts shown in Table 4 are to be allowed in addition, if applicable. These are miscellaneous costs in respect of service. ***CPR 45.4:*** Where the claimant has claimed fixed commencement costs under rule 45.2; and judgment is entered the amount to be included in the judgment for the claimant's legal representative's charges is the total of the fixed commencement costs; and the relevant amount shown in Table 2. For default judgment these will depend on whether the default was on an acknowledgment of service or default of a defence. These range between £22-£35.	

Question 2:	Explain which cases qualified one-way costs shifting applies to, when costs protection under the rules may be lost and whether it represents a departure from the general rule that the loser pays the winner's costs.
Total Marks Attainable Fail = 0-4.9 Pass = 5+ Merit = 6+ Distinction = 7+	10
Indicative Content	**Marks**
Required (candidates are required to explore what QOCS is): ***CPR 44.2(1):*** The Court retains discretion as to costs and QOCS does not impact this. ***CPR 44.2(2)(a):*** The normal rule that the losing party to litigation is ordered to pay the winning party's costs is not displaced by QOCS. ***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.	Up to 2 marks
Any other relevant point to describe where QOCS does/doesn't apply (credit any case law/points of law correctly cited and applied) e.g: ***CPR 44.13:*** 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.	Up to 2 marks

CPR 44.17: QOCs will not apply where the claimant had entered into a 'pre-commencement funding arrangement'. ***CPR 48:*** defines a pre-commencement funding arrangement (essentially a CFA entered into before 1 April 2013). ***Examples of case authority that may be considered:*** 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].	
Any other relevant point to describe the enforcement of costs orders, under CPR 44.14, where QOCS applies (credit any case law/points of law correctly cited and applied) e.g: ***CPR 44.14(1):*** Orders can be enforced to the extent that the amount of the costs does not exceed the damages awarded to the claimant. The claimant can be ordered to pay the defendant's costs up to the amount awarded to him. ***CPR 36:*** This covers a situation where a claimant fails to beat a defendant's Part 36 offer. ***CPR 44.14 (2):*** May only be enforced after the proceedings have been concluded and the costs have been assessed or agreed.	Up to 2 marks
Any other relevant point to describe the enforcement of costs orders, under CPR 44.15, where QOCS applies and the court's permission is not required to enforce the order (credit any case law/points of law correctly cited and applied) e.g: ***CPR 44.15:*** 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. ***Examples of case authority that may be considered:*** Wall v British Canoe Union [2015] (claim no. A38YP644) (Unreported), Brahilka v Allianz Insurance (Claim No. A93YP597 in the Romford County Court) (unreported), 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 2 marks
Any relevant point to describe the enforcement of costs orders, under CPR 44.16, where QOCS applies and the court's permission is required to enforce the order (credit any case law/points of law correctly cited and applied) e.g:	Up to 4 Marks

CPR 44.16(1): 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. ***Examples of case authority that may be considered:*** 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]. ***CPR 44.16(2)(a):*** 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 court can make an order for costs against that other person. ***CPR 44.16(2)(b):*** 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. ***CPR PD 44, para 12.2:*** Includes examples of when CPR 44.16(2)(b) may apply and the examples given are subrogated claims and claims for credit hire. ***Examples of case authority that may be considered:*** 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]. ***CPR 44.16(3):*** The orders under CPR 44.16 against claimants can be enforced to their full extent only with court permission.	
Any relevant point to describe set-off of costs orders, under CPR 44.12, (credit any case law/points of law correctly cited and applied) e.g: ***CPR 44.12(1):*** 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	Up to 2 marks

Examples of case authority that may be considered: 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]	

Question 3:	Explain what the Costs Lawyer Standards Board Code of Conduct means when it says that Costs Lawyers should comply with their duty to the Court in the administration of justice.
Total Marks Attainable Fail = 0-4.9 Pass = 5+ Merit = 6+ Distinction = 7+	10
Indicative Content	**Marks**
Required: Candidates must explain the legislative framework governing the regulation of authorised persons, e.g: ***The legislative framework governing the regulation of authorised persons:*** Authorised persons are people who are authorised to carry out the relevant activity by a relevant approved regulator or a licensable body which, by virtue of such a licence, is authorised to carry on the relevant activity by a licensing authority in relation to the reserved legal activity. An approved regulator is a body which is designated as an approved regulator by Schedule 4 of the LSA 07. ACL is approved regulator, as an approved regulator under the LSA ACL regulate those undertaking reserved legal activities who are known as Costs Lawyers. However, there is a memorandum of understanding between ACL and the CLSB delegating the regulatory function to the CLSB. ***Credit reference to any authority cited in relation to the legislative framework governing the regulation of authorised persons, 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 and Schedule 4 of the Legal Services Act 2007. ***Undertaking reserved legal activities:*** The reserved legal activities relevant to Costs Lawyers include: the exercise of rights of audience, the conduct of litigation and the administration of oaths. 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	Up to 5 marks To pass candidates must demonstrate their understanding of the legislative framework governing the regulation of authorised persons

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 in relation to undertaking reserved legal activities, e.g:*** Section 12 and Sch 2 of the Legal Services Act 2007, 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 Legal Services Act 2007 and Section 176(2)(b) of the Legal Services Act 2007.	
Credit discussion of the costs lawyer's duty to the court, e.g: ***CLSB Code of Conduct Principle 2:*** Costs Lawyers must comply with their duty to the court in the administration of justice. Costs Lawyers must at all times act within the law. Costs Lawyers 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. ***Credit reference to any authority cited in relation to Principle 2 of the CLSB Code of Conduct, 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 and CLSB Code of Conduct Principle 2.4. ***CLSB Code of Conduct Principle 3:*** Costs Lawyers must act in the best interests of their client. Costs Lawyers 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 in relation to Principle 3 of the CLSB Code of Conduct, e.g:*** CLSB Code of Conduct Principle 3 and CLSB Code of Conduct Principle 3.1. ***Responsibility and authority on an assessment hearing:*** 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	Up to 6 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 authority to the question posed

costs draftsman has the same authority as the solicitor would have had to consent to orders. ***Credit reference to any authority cited in relation to the responsibility and authority on an assessment hearing, e.g:*** Crane v Canons Leisure Centre [2007], Ahmed v Powell [2003] and Waterson Hicks v Eliopoulos [1997]. ***Negligence:*** Initially, claimant's civil actions for negligence could not be sustained: a barrister's immunity was justified by public policy. This immunity extended to pre-trial work if and only if it is so intimately connected with the conduct of the case in court as to amount to a preliminary decision about it. However, it has subsequently been recognised 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, should do so with proper skill and care. ***Credit reference to any authority cited in relation to negligence, e.g:*** Rondel v Worsley [1967], Saif Ali v Sydney Mitchell [1978] and Arthur J S Hall & Co v Simmons [2007]. ***Approach to advocacy:*** The principle that an advocate is liable to his client for professional 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. The courts have not yet developed a clear set of principles governing the terms in which an advocate's advice should be given. If a point is not properly arguable, it should not be argued. 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. ***Credit reference to any authority cited in relation to approach taken to advocacy, e.g:*** Moy v Pettmann Smith (A Firm) & Anor [2005], Buxton v Mills-Owens [2010] and Copeland v Smith [2002].	
Credit a discussion on the CLSB Practising Rules, e.g: ***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	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

CLSB. Costs Lawyers must ensure that they have professional indemnity insurance. ***Credit reference to any authority cited in relation to the 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 Rules.	authority to the question posed

Question 4:	Outline the rules that set out that Costs Lawyers must not accept client money and explain whether there are any exceptions to the rule.
Total Marks Attainable Fail = 0-7.4 Pass = 7.5+ Merit = 9+ Distinction = 10.5+	15
Indicative Content	**Marks**
Must include a discussion as to what client money is, 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. ***Rule 2.1(a) of the SRA Account Rules 2019:*** "Client money" includes money held or received relating to regulated services delivered to a client. ***Rule 2.1(b) of the SRA Account Rules 2019:*** "Client money" includes money held or received on behalf of a third party in relation to regulated services (such as money held as agent, stakeholder or held to the sender's order). ***Rule 2.1(c) of the SRA Account Rules 2019:*** "Client money" includes money held or received as a trustee or as the holder of a specified office or appointment, such as donee of a power of attorney, Court of Protection deputy or trustee of an occupational pension scheme. ***Rule 2.1(d) of the SRA Account Rules 2019:*** "Client money" includes 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. ***CILEx Account Rules:*** define client money as money beneficially owned by anyone other than the Authorised Entity.	Up to 4 marks

May also include a discussion on the protection of the public and minimising risks, e.g: ***Principle 3 of the CLSB Code of Conduct:*** Generally is about acting in the best interests of the client ***Principle 3.6 of the Costs Lawyer Code of Conduct:*** A costs lawyer must not accept client money save for disbursements and payment of your proper professional fees. ***CLSB Practising Rules:*** There is no mention of the CLs handling client money in the CLSB Practising Rules. ***Section 1 LSA 07:*** 8 regulatory objectives. ***Section 20 LSA 07:*** Approved regulators. ACL is named as the approved regulator but the CLSB have the delegated functions.	Up to 5 marks
May also include a discussion on the definition of "proper professional fees" and disbursements e.g: ***CLSB Guidance Note Handling Client Money (Principle 3.6):*** Fees incurred on having complied with a client instruction, made up of payment for services provided; and disbursements paid on behalf of the client. ***CLSB Guidance Note Handling Client Money (Principle 3.6):*** 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). ***CLSB Guidance Note Handling Client Money (Principle 3.6):*** Disbursements do not include hourly rates, telephone calls made or received, faxes made or received, or general office overheads.	Up to 2 marks
May also include a discussion on Costs Lawyer request payment in advance for their services or the difference where a Costs Lawyer works for an SRA regulated firm, e.g ***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:*** Where a Costs Lawyer is working for a firm not authorised and regulated under the LSA or is a sole practitioner.	Up to 2 marks

Interim billing: Arrangements can be agreed with a client to reduce financial exposure on payment for services provided and reimbursement for disbursements.	

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

Question 5:	You work in the Litigation Department for an SRA regulated firm, Irving and Cummings LLP. You are contacted by a fee earner, Tracy Callaghan, who has requested help on the file of Dominic Puissant. You have acted for Mr Puissant in relation to his accountancy business in the past. He has returned from Portugal having been on an extended holiday and found that Judgment has been entered against him by Mystic Machines Ltd. Mr Puissant had not replied to the Claim Form and it was therefore ordered that he pay Mystic Machines £16,900, being the amount claimed, plus interest to the date of Judgment, and £240 for costs. Mr Puissant disputes the money is owed. Mystic Machines Ltd supplied him with a computer system and that system failed to work properly and in its current state is unusable. Your firm have been instructed to make an application to the Court to set aside the Default Judgment. Tracy Callaghan has asked that you write a letter of advice to Mr Puissant explaining what a Default Judgment is, how the Judgment has been obtained and upon what basis the Court may set aside a Default Judgment. Write the body of a letter to Mr Puissant providing advice on Default Judgments.
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: what a default judgment is, how a default judgment may be obtained, when permission may be needed to apply for a default judgment and the mandatory grounds for setting aside a default judgment. Candidates will demonstrate a good depth of knowledge of the subject (i.e. a good understanding of the procedure and impact of making an application)

		with good application and some analysis having regard to the facts, although candidates may demonstrate some areas of weakness.
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 likely outcome in terms of costs) with very good application and some analysis having regard to the facts. Candidates are likely to observe that IN THIS SCENARIO it is likely the court will set aside the default judgment if it can be demonstrated 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. 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 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. 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: Candidate should explain what a Default Judgment is, how a Judgment may be obtained and upon what basis the Court may set aside a Default Judgment, e.g: ***A Default Judgment is:*** A default judgment is judgment without trial where a defendant has failed to file an acknowledgment of service; or has failed to file a defence. ***How a Judgment may be obtained:*** Defendant does not respond after 14 days, or acknowledges service within 14 days, but does not file and serve a defence within 28 days, the claimant can apply for 'judgment by default'. ***The basis the Court may set aside a Default Judgment:*** The mandatory grounds, upon which the court must set the judgment aside: D has filed an admission with request for time to pay, D had applied for summary judgment against the claimant, the claim was satisfied before judgment and D has complied with the rules. ***Credit reference to any authority cited on what a Default Judgment is, how a Judgment may be obtained and upon what basis the Court may set aside a Default Judgment, e.g:*** CPR 12, CPR 12.1 and CPR 13.2.	Up to 5 Marks
Credit a discussion on making an application for Default Judgment under Part 12 Civil Procedure Rules (CPR), e.g	Up to 7 Marks

Making an application: If a defendant fails to file an acknowledgment of service and does not within that period file a defence in accordance with Part 15 or serve or file an admission in accordance with Part 14, the claimant may obtain default judgment if Part 12 allows it. 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. Both on a request and on an application for default judgment the court must be satisfied that the particulars of claim have been served on the defendant (a certificate of service on the court file will be sufficient evidence), either the defendant has not filed an acknowledgment of service or has not filed a defence and that in either case the relevant period for doing so has expired, the defendant has not satisfied the claim, and the defendant has not returned an admission to the claimant or filed one with the court under rule. ***Credit reference to any authority cited on making an application, e.g:*** CPR 10.2, CPR 12.3(1), CPR 6, Form N225 and CPR PD 12, para 4.1. ***When a DJ may not be obtained or when permission of the court may be needed:*** A claimant may not obtain a 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. 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 when a DJ may not be obtained or when permission of the court may be needed, e.g:*** CPR 12.2 and CPR 12.10.	
Credit a discussion on setting aside a default judgment, e.g: ***Setting aside a DJ:*** The mandatory grounds, upon which the court must set the judgment aside: D has filed an admission with request for time to pay, D had applied for summary judgment against the claimant, the claim was satisfied before judgment and D 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.	Up to 8 marks

Credit reference to any authority cited on setting aside a DJ, e.g: CPR 13.2 and CPR 13.3. ***Promptness:*** 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. ***Credit reference to any authority cited on promptness in making an application, e.g:*** Page v Champion Financial Ltd [2014], Gentry v Miller [2016] and Stanley v London Borough Tower Hamlets [2020].	
Credit a discussion on the costs consequences of such an application, e.g: ***Legal representatives' charges:*** No sum in respect of legal representatives' charges will be allowed where the only claim is for a sum of money or goods not exceeding £25. Any appropriate court fee will be allowed in addition to the costs set out. ***Credit reference to any authority cited on legal representatives' charges, e.g:*** CPR 45.1(1), CPR 45.1 (2) (a)(i), CPR 45.1 (3) and CPR 45.1 (4). ***Fixed commencement costs:*** The claim form may include a claim for fixed commencement costs. The amount of fixed commencement costs in a claim will be calculated by reference to Table 1; and the amount claimed, or the value of the goods claimed if specified, in the claim form is to be used for determining the band in Table 1 that applies to the claim. The amounts shown in Table 4 are to be allowed in addition, if applicable. These are miscellaneous costs in respect of service. Where the claimant has claimed fixed commencement costs and judgment is entered the amount to be included in the judgment for the claimant's legal representative's charges is the total of the fixed commencement costs and the relevant amount shown in Table 2. For default judgment these will depend on whether the default was on an acknowledgment of service or default of a defence. These range between £22-£35. ***Credit reference to any authority cited on fixed commencement costs, e.g:*** CPR 45.1 (5), CPR 45.2, CPR 45.2 (1), CPR 45.2 (2) and CPR 45.4.	Up to 4 marks

Question 6:	As a self-employed Costs Lawyer, you take instructions from various firms across the country. You have recently been instructed by Ms Lister, a senior solicitor at Harrison and Clarkson LLP based in Norwich. The firm are regulated by the Solicitors Regulatory Authority and specialise in clinical negligence claims. You have been working on the file of Mr Harper. Mr Harper sought damages against Barts Health NHS Trust for clinical negligence. His claim was settled for £5,750. You drafted his bill of costs, which totalled £19,201.22. This included the recoverable element of the

	ATE insurance premium of £5,189. The policy was a block-rated policy. The Respondent produced a lengthy set of Points of Dispute. Many of the points were generic and repetitive, with numerous references to authorities and requests for further information. A challenge to the ATE insurance premium was also made, but this was included in a separate set of submissions. This document also included lengthy citation of authority, together with a paragraph about the public purse. The paragraph stated that as a matter of public importance, the Court must ensure that ATE premiums which are held to be recoverable in principle are assessed in proportionate and reasonable sums. The Respondent's submissions then suggested that at the outset Mr Harper's prospects of losing the case were very low and calculated what was described as a reasonable and proportionate premium to be £250. In the alternative, the Respondent put forward what it said was a comparable policy which had been obtained with a premium of between £1,900 and £2,003.20. The costs were the subject of a provisional assessment by Deputy District Judge Topper and you've now had sight of the outcome of that assessment. As to reasonableness, Deputy District Judge Topper concluded that it was reasonable to incur the ATE premium. As to proportionality, however, he noted that a comparable premium approach had been adopted in satisfaction of achieving the overriding objective and proportionality. He reduced the premium to £2,003.20, adopting the comparable policy value put forward by the Respondent. You are of the view that an application should be made for a review of the provisional assessment, the main point in issue being the recoverability of the ATE insurance premium. Write the body of an email to Ms Lister advising why you believe there should be a review in this case.
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. An answer which makes little or no sense OR is so poorly written as to lack coherence OR the answer will only demonstrate an awareness of some of the more obvious issues and is likely to be poorly written.

Pass	10+	An answer which addresses MOST of the following points: Definitions and salient points in respect of ATE and premiums, recoverability pre and post LASPO and the exception to the general rule in respect of clinical negligence matters. Candidates will demonstrate a good depth of knowledge of the subject (i.e. a good understanding of the legislative framework around the recoverability of premiums) with good application and some analysis having regard to the facts, although candidates may demonstrate some areas of weakness.
Merit	12+	For a mark in this band, the answer will deal with ALL of the requirements required for a pass however, candidates will have produced responses that have more depth and more application and analysis, as appropriate. The answer should also address ALL of the following points: the applicability of the CPR to premiums i.e the assessment of premiums in proportionate and reasonable sums, the argument that there were comparable cheaper products on the market and the likelihood of the premium being reduced on assessment. The answer is also likely to include some discussion on the reasonableness of premiums. Candidates will demonstrate a very good depth of knowledge of the subject (i.e. a good understanding of the legislative framework around the recoverability of premiums) 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 the likelihood of the challenges succeeding. 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 must demonstrate knowledge of the legislative framework governing the recoverability of ATE premiums, e.g: ***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 regulations made by the Lord Chancellor in clinical negligence cases permitting for the recovery of ATE premiums in relations to medical experts reports. The regulations provide that insurance premiums are recoverable where the insurance is against the risk of incurring experts fees re	Up to 4 marks

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 has been commented on by the C of A that this ought to be looked at by the Rules Committee. ***Credit reference to any authority cited on the legislative framework governing the recoverability of ATE premiums, e.g:*** Section 46(1) of the Legal Aid Sentencing and Punishment of Offenders Act 2012, Section 58C(1) of the Courts and Legal Services Act 1990, Section 58C(2) of the Courts and Legal Services Act 1990, Recovery of Costs Insurance Premiums in Clinical Negligence Proceedings (No 2) Regulations 2013 and Peterborough & Stamford Hospital NHS Trust v McMenemy [2017].	
Candidates should be credited for any discussion on reviews of provisional assessments, e.g: ***Reviews of provisional assessments:*** Either party can request an oral hearing up to 21 days after receipt of the paper determination. The scope of this hearing is strictly confined. It is not a rehearing where all issues are up for grabs, but a review. When a provisional assessment has been carried out, the court will send a copy of the bill, as provisionally assessed, to each party with a notice stating that any party who wishes to challenge any aspect of the provisional assessment must, within 21 days of the receipt of the notice, file and serve on all other parties a written request for an oral hearing. If no such request is filed and served within that period, the provisional assessment shall be binding upon the parties, save in exceptional circumstances. The written request must identify the item or items in the court's provisional assessment which are sought to be reviewed at the hearing; and provide a time estimate for the hearing. The court will fix a date for the hearing and give at least 14 days' notice of the time and place of the hearing to all parties. ***Credit reference to any authority cited on reviews of provisional assessments, e.g:*** CPR 47.15, CPR 47.15(7), CPR 47.15(8) and CPR 47.15(9).	Up to 4 marks
Credit any discussion on the court's discretion, general challenges to premiums and reasonableness, e.g: ***Basis of Assessment and reasonableness:*** Court has discretion as to costs BUT emphasis on proportionality because of the standard basis of assessment (CPR 44.3(2) and the overriding objective). 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	Up to 5 marks

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. Whatever basis: Reasonableness would always be considered. ***Credit reference to any authority cited on basis of assessment and reasonableness, e.g:*** Section 51 of the Senior Courts Act 1981, CPR 44.2, CPR 44.3(2) and CPR 44.3(3) ***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. Costs judges do not have the expertise to second guess the insurance market, still less to deconstruct a policy that is offered as a package into its constituent parts. ***Credit reference to any authority cited on challenges to premiums, e.g:*** Emily Noakes v Heart of England Foundation NHS Trust [2015] and Callery v Gray (No 2) [2002] ***Not unreasonable:*** A high limit of indemnity does not of itself indicate an unreasonable premium; block risk policies are not unreasonable; the premium to be allowed is the total premium paid, not the pure underwriting risk premium; assessment fees and profit costs of complying with the policy are recoverable; the receiving party need not have made the best choice, it just needs to be a reasonable choice when choosing the particular ATE insurer; it is reasonable to insure before sending the pre-action letter to the other side; it is reasonable to wait until the defendant's reaction to the claim is known; and if the premium is at or above the top of the range of other policies, the purchaser needs to explain why it chose this insurance—the court may disallow some elements of the premium if they are inflated or do not relate to insuring a costs liability. A premium will not be held to be unreasonable even when taking out ATE insurance to protect against a relatively low risk. ***Credit reference to any authority cited on what has been deemed to be not unreasonable, e.g:*** Allan Coleman v Medtronic Ltd [2016], Callery v Gray (No 1) [2001], Rogers v Merthyr Tydfil [2007], Peterborough & Stamford Hospital NHS Trust v McMenemy [2017].	
Credit any discussion on whether proportionality applies to ATE premiums, e.g:	Up to 5 marks

Applicability of Proportionality: Since LASPO there has been some uncertainty as to whether proportionality applies to ATE premiums and whether the CPR are engaged upon assessment. There has also been uncertainty around the test that applies. At first instance there were decisions suggesting that the new test would not apply. However, the Court of Appeal has held that ATE premiums taken out after 1 April 2013 should be dealt within under the post LASPO proportionality test applies. The CPR is engaged when assessing recoverability of ATE premiums and they are subject to the scrutiny of the Court. The Court require expert evidence if a premium is to be challenged. **Credit reference to any authority cited on whether proportionality applies to ATE premiums, e.g:** BNM v MGN Ltd [2016], King v Basildon & Thurrock Hospital NHS Trust [2016], Murrell v Cambridge University Hospital NHS Trust [2017], Mitchell v Gilling Smith [2017], BNM V MGN LTD [2017] and Peterborough & Stamford Hospital NHS Trust v McMenemy [2017].	
Credit any discussion on how proportionality should be applied to ATE premiums, e.g: ***The tests of proportionality:*** The pre LASPO Approach was to consider item by item then stand back, items disproportionate but necessary were recoverable. The post LASPO test states that costs which are disproportionate can be disallowed or reduced even where reasonably incurred. There are a list of factors to be taken into account when considering if costs are proportionate. Costs are proportionate if they bear a reasonable relationship to sums in issue, value of non-monetary relief, complexity of litigation, additional work generated by conduct, wider factors, vulnerability. **Credit reference to any authority cited on the tests of proportionality, e.g:** Lownds v Home Office [2002], CPR 44.3(2) and CPR 44.3(5) (a) to (f). ***Application of Proportionality:*** There has been uncertainty as to how the new test or proportionality should apply. However the Court of Appeal has now provided a degree of certainty. It 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. Callery number 2 remains good law. If there are to be future challenges to premiums they should be run as test cases. **Credit reference to any authority cited on the application of proportionality, e.g:** BNM v MGN Ltd [2017], May v Wavell Group [2016], May v Wavell Group [2017], West and Demouilpied v Stockport NHS Foundation Trust [2020].	Up to 6 marks

Question 7:	You work in the Costs Department for an SRA regulated firm, Browne and Smith LLP. You are working on a file where your firm are instructed by the Defendant, Trishners Ltd, in a claim brought by Hillary Manning. On 10 July 2019, Ms Manning visited a client in a block of flats owned by Trishners. When leaving the flats, she tripped over a doorstop in the floor and fell heavily on her right side. She suffered no bony injury, but considerable soft tissue injuries to her right hand, arm and shoulder. On 13 November 2019, Ms Manning wrote a letter before claim to Trishners, understanding them to be the owner of the relevant premises. On 16 January 2020, Trishners admitted liability. Trishners made several offers of settlement, including a Part 36 offer of £50,000 on 18 March 2020. Ms Manning accepted that offer late, on 12 April 2020, on the basis that Trishners would also pay her costs. Detailed Assessment Proceedings were commenced and a Bill of Costs was prepared on behalf of Ms Manning by a self employed Costs Draftsmen. The bill was certified by the solicitor who had conduct of the matter. You drafted points of dispute, which included a request for disclosure of the conditional fee agreement, a question over what other methods of funding were available and a point challenging the hourly rates on the basis that they were high. Upon receipt of the replies, it has become evident that the hourly rate claimed was not the rate included within the conditional fee agreement, the rate claimed was in fact considerably higher. There was also no evidence that a higher rate had ever been agreed between Ms Manning and her solicitors. You are also now aware that Ms Manning had the benefit of Before the Event Insurance. You are of the view that the hourly rate that has been certified is "unlawful", in the sense that it was more than the rate Ms Manning was obliged to pay her solicitors and therefore breaches the indemnity principle. You believe that this may be a case where the Court would consider making a Wasted Costs Order against the solicitors that had conduct of the matter and you need to prepare an advice to Trishners setting out what a Wasted Costs Order is and when the Court can make a Wasted Costs Order against a legal representative.

	Prepare the body of a letter to Trishners Ltd advising on Wasted Costs Orders.

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 the court's discretion as to costs, the factors the court may consider when making a costs order, what a wasted costs order is, when a wasted costs order would be made and the court's approach to making a wasted costs order. 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 the personal liability of a costs lawyer) 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 court's discretion as to costs, e.g: ***Discretion of the court:*** Costs payable by one party to another are the discretion of the court. 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 relevant authority cited on the discretion of the court, 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 An explanation should be given as to what is meant by the court's discretion
Credit a discussion on wasted costs orders, e.g: ***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	Up to 10 marks

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 ***Two stages:*** As a general rule the court will consider whether to make a wasted costs order in two stages at the first stage the court must be satisfied that it has before it evidence or other material which, if unanswered, would be likely to lead to a wasted costs order being made and the wasted costs proceedings are justified notwithstanding the likely costs involved. At the second stage, the court will consider, after giving the legal representative an opportunity to make representations in writing or at a hearing, whether it is appropriate to make a wasted costs order in accordance with paragraph 5.5 above. ***Credit reference to any authority cited on the two stage approach, e.g:*** CPR PD 46 para 5.7(a) and CPR PD 46 para 5.7(b). ***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). ***Guidance from the common law:*** The Court should only make a Wasted Costs Order where the legal representative has acted improperly, negligently or unreasonably - a mistake is not enough. Wasted Costs Orders are discretionary and should be reserved for unjustifiable conduct. Wasted Costs Orders should not be used as a threat to intimidate the other party. Wasted Costs Orders should not be motivated by a resentment or inability to obtain an effective costs order against an impecunious litigant. Wasted costs were neither a punitive nor a regulatory jurisdiction, but rather a compensatory one. ***Credit reference to any case authority cited, e.g:*** Ridehalgh v Horsefield (1994), Orchard v SE Electricity Board (1987), Harley v	

McDonald (2001), Kiam v MGN Limited No2 [2002], Wates Construction Limited v HGP Greentree Alchurch Evans Limited [2006], Cancino [2015], Noorani v Calver [2009], Awuah and Others [2017].	
Credit a discussion on applications for wasted costs orders, e.g: ***Application or court's own initiative:*** 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. ***Credit reference to an application or court's own initiative, e.g:*** CPR PD 46 para 5.3 and CPR PD 46 para 5.4 ***Making an application:*** 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. 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. Wasted costs applications should be left until the end of the trial. Applications are usually raised by the aggrieved party but can be made by the court of its own initiative. ***Credit reference to any authority cited on making an application, e.g:*** CPR PD 46 para 5.4, CPR 23, 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 8 Marks
Credit a discussion on the indemnity principle, e.g: ***The indemnity principle and retainer:*** The indemnity principle simply provides that the receiving party cannot recover more costs from the paying party than he himself would be liable to pay his own solicitors. The retainer is fundamental to the right to recover costs. Where there is no retainer there is no entitlement to	Up to 5 Marks To achieve a distinction candidates should demonstrate a

charge, there is no business relationship. A retainer must be enforceable in order to charge the client and recover costs inter partes. The indemnity principle does not apply in certain circumstances e.g. legal aid. ***Credit reference to the citation of any authority cited on the retainers and the indemnity principle, e.g:*** JH Milner v Percy Bilton [1966], Scott v Hull and East Yorkshire Hospitals NHS Trust [2014] and Bailey v IBC (1998).	sound ability to apply the law to the facts of the scenarios presented.

Question 8:	You work for Truman & Raggett Costs Services, a large, reputable firm of costs professionals based in Liverpool. The firm predominately undertake work for receiving parties. You have just qualified as a Costs Lawyer. One of the supervising Costs Lawyers has approached you to draft some training materials. She is aware that the area of ethics and professional standards is one which you have recently studied as part of your training course and considers that you are the most suitable person to prepare the materials. The materials are for all fee earning staff at the firm and need to outline the reserved legal activities a Costs Lawyer can undertake and the principles of the CLSB Code of Conduct. You have been asked to have particular regard to the principles which apply when preparing bills of costs and during negotiations. She would also like you to explain why it may be that staff at the firm may not be able to act in accordance with instructions provided to them. Prepare the body of the training materials as requested by the supervising Costs Lawyer.
Total Marks Attainable	20

Fail	up to 9.9	An answer which deals with the basic requirements of the question, but in dealing with this 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 framework governing authorized persons.
Pass	10+	An answer which addresses MOST of the following points: Candidates must provide an explanation of what it means to be an authorized person, the right to undertake reserved legal activities, the requirement to comply with the CLSB code of conduct and the guarantee by the CLSB practicing rules as to behavior with the consequence for non-compliance.

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 fact the solicitors will retain responsibility for the acts of agents) 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 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 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 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 must explain what it means to be regulated as a Costs Lawyer, e.g: ***Costs Lawyers as Authorised Persons:*** Authorised persons as those who are authorised to carry on the relevant activity by a relevant approved regulator in relation to the relevant activity. An authorised person can also include a licensable body which, by virtue of such a licence, is authorised to carry on the relevant activity by a licensing authority in relation to the reserved legal activity. An approved regulator is a body which is designated as an approved regulator by Schedule 4 of the Legal Services Act 2007. ACL is an approved regulator, approved regulators under the LSA regulate those undertaking reserved legal activities who are known as authorised persons. There is a Memorandum of Understanding between ACL and the CLSB delegates the regulatory function to the CLSB. ***Credit reference to any authority cited in relation to Costs Lawyers as Authorised Persons, e.g:*** Section 18 of the Legal Services Act 2007, Section 20 of the Legal Services Act 2007, and Section 20(5) of the Legal Services Act 2007 and Schedule 4. ***Undertaking reserved legal activities:*** 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 in question. The reserved legal activities relevant to Costs Lawyers include: the	Up to 6 marks In order to achieve a pass, candidates must (albeit not explicitly) describe what it means to be an authorised person

exercise of rights of audience, the conduct of litigation and the administration of oaths. ***Credit reference to any authority cited in relation to undertaking reserved legal activities, e.g:*** Section 12 and Sch 2 of the Legal Services Act 2007, Section 13(1) of the Legal Services Act 2007, Section 13(2)(a) of the Legal Services Act 2007 and Section 13(2)(b) of the Legal Services Act 2007.	
Credit a discussion on the requirement for a Costs Lawyer to comply with the CLSB Code of Conduct and a discussion on the code, e.g: ***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 in relation to the requirement for Costs Lawyers to adhere to CLSB code of Conduct, e.g:*** Section 176(1) of the Legal Services Act 2007 and Section 176(2)(b) of the Legal Services Act 2007. ***CLSB Code of Conduct Principle 2:*** Costs Lawyers must comply with their duty to the court in the administration of justice. Costs Lawyers must at all times act within the law. Costs Lawyers 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. ***Credit reference to any authority cited in relation to Principle 2 of the CLSB Code of Conduct, 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 and CLSB Code of Conduct Principle 2.4. ***CLSB Code of Conduct Principle 3:*** Costs Lawyers must act in the best interests of their client. Costs Lawyers 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 in relation to Principle 3 of the CLSB Code of Conduct, e.g:*** CLSB Code of Conduct Principle 3 and CLSB Code of Conduct Principle 3.1.	Up to 10 marks

CLSB Code of Conduct Principle 4: Costs Lawyers must provide a good quality of work and service to each client. They must only undertake work for which they are properly qualified. Work must be undertaken with due skill, care and attention, with proper regard for the technical standard expected of them. ***Credit reference to any authority cited in relation to Principle 4 of the CLSB Code of Conduct, e.g:*** CLSB Code of Conduct Principle 4.1 and CLSB Code of Conduct Principle 4.2 ***CLSB Code of Conduct Principle 5:*** Costs Lawyers must deal with the regulators and Legal Ombudsman in an open and co-operative way. They must promptly notify the CLSB of any breach of the CLSB Code by themselves or other Costs Lawyers. ***Credit reference to any authority cited in relation to Principle 5 of the CLSB Code of Conduct, e.g:*** CLSB Code of Conduct Principle 5.1 ***CLSB Code of Conduct Principle 6:*** Costs Lawyers must treat everyone with dignity and respect. Costs Lawyers must make reasonable adjustments for those with a disability to ensure they are not at a disadvantage in comparison with those without disabilities. ***Credit reference to any authority cited in relation to Principle 6 of the CLSB Code of Conduct, e.g:*** CLSB Code of Conduct Principle 6.3 ***CLSB Code of Conduct Principle 7:*** Costs Lawyers must keep their work on behalf of their clients confidential.	
Credit a discussion on preparing bills of costs and during negotiations, e.g: ***The indemnity principle and retainer:*** The indemnity principle simply provides that the receiving party cannot recover more costs from the paying party than he himself would be liable to pay his own solicitors. The retainer is fundamental to the right to recover costs. Where there is no retainer there is no entitlement to charge, there is no business relationship. A retainer must be enforceable in order to charge the client and recover costs inter partes. The indemnity principle does not apply in certain circumstances e.g. legal aid. ***Credit reference to the citation of any authority cited on the retainers and the indemnity principle, e.g:*** JH Milner v Percy Bilton [1966], Scott v Hull and East Yorkshire Hospitals NHS Trust [2014] and Bailey v IBC (1998). ***Responsibility and authority on an assessment hearing:*** The solicitors are responsible for the conduct of the detailed	Up to 8 marks To achieve a merit or distinction, candidates should not simply cite the relevant rules and principles but must show an ability to apply the rules to the scenario.

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 in relation to the responsibility and authority on an assessment hearing, e.g:*** Crane v Canons Leisure Centre [2007], Ahmed v Powell [2003] and Waterson Hicks v Eliopoulos [1997].	

Question 9:	You are a Costs Lawyer and head the Costs and Accounts Department at Harrold Henderson LLP, a large high street firm in York. You work alongside Henrietta Tandy, who is the Compliance Officer for Finance and Administration. Henrietta has asked you to assist with the drafting of a business proposal for the bank to consider in order for the firm to secure a loan to expand its client offering. The firm wishes to set up a Conveyancing Department. This means that the firm will need to recruit many new members of staff for the department and you need to satisfy the bank that all staff will have the required training to safeguard against risks. You have been asked to produce a written piece of information on the risks and regulations of running a Conveyancing Department. Specifically, the checks the department will need to take to confirm the identity of clients and the source(s) of any funds the firm receives. Therefore, you will need to write about money laundering and the associated offences. Prepare a summary that you will include in your business proposal on the aspects detailed above.	
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 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**
Candidates should explain what money laundering is, e.g: ***Money laundering is:*** The process by which criminal proceeds are sanitised to disguise their illicit origins. ***Credit reference to relevant legislation and regulations, e.g:*** The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, the Proceeds of Crime Act 2002 and the Terrorism Act 2000. ***Application of Regulations:*** The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 apply to certain categories of persons acting in the course of business carried on in the UK. They also apply to independent legal professionals participating in certain financial or real property transactions. ***Credit reference to authority that sets out the application of the regulations, e.g:*** 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 4 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 SRA requirements and applicability of the regulations, e.g: ***Governance, systems and controls a firm should have in place:*** 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 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. ***Credit reference to authority that details the governance, systems and controls a firm should have in place, 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 and Regulation 21 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017. ***Training:*** SRA regulated firms and lawyers are required 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. 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 reference to authority on training, e.g:*** Paragraph 7.1 of the SRA Code of Conduct for Solicitors, RELs and RFLs, Paragraph 3.1 of the SRA Code of Conduct for Firms and Regulation 24 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017.	Up to 7 marks
Credit a discussion on customer due diligence, e.g: ***Due diligence and identification:*** 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	Up to 6 marks

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, 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 reference to authority on due diligence, e.g:*** Regulation 27 of the Money Laundering, Terrorist Financing and Transfer of Funds (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 EDD 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' (PEP), or a family member or known associate of a PEP and any other situation that presents a higher risk of money laundering or terrorist financing. ***Credit reference to authority 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 reference to authority on simplified due diligence, e.g:*** Regulation 37 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017.	

Credit a discussion on the principal money laundering offences, who may investigate offences and who may prosecute offences, e.g: ***Offences under the Proceeds of Crime Act 2002:*** A person will be liable for an offences 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. ***Credit reference to authority that sets out the offences under the Proceeds of Crime Act 2002, e.g:*** Section 327 of the Proceeds of Crime Act 2002, Section 328 of the Proceeds of Crime Act 2002 and Section 329 of the Proceeds of Crime Act 2002. ***Offences under the Serious Crime Act 2015:*** This legislation introduced the 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. ***Credit reference to authority that sets out the offences under the Serious Crime Act 2015, e.g:*** Section 45 of the Serious Crime Act 2015. ***Offences under the Terrorism Act 2002:*** It is an offence to be involved in fundraising if you have knowledge or 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). ***Credit reference to authority that sets out the offences under the Terrorism Act 2002, e.g:*** Section 15 of the Terrorism Act 2002, Section 16 of the Terrorism Act 2002 and Section 18 of the Terrorism Act 2002 ***Investigation and prosecution of offences:*** Money laundering offences are principally investigated by the police, the National Crime Agency (NCA) or HM Revenue & Customs (HMRC), or, if the	Up to 8 marks

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 and 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).	