# September 2020: 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 by a claimant if the defendant fails to file an acknowledgement of service after the claim form has been issued and served. |
|---|---|
| **Total Marks Attainable**<br><br>Fail = 0-4.9<br>Pass = 5+<br>Merit = 6+<br>Distinction = 7+ | 10 |
| **Indicative Content** | **Marks** |
| **Required: Candidate should set out that an application should be made for Default Judgment under Part 12 Civil Procedure Rules (CPR), e.g**<br><br>***CPR 12:*** 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'.<br><br>***CPR 12.1:*** Default judgment means judgment without trial where a defendant has failed to file an acknowledgment of service; or has failed to file a defence.<br><br>***CPR 12.3(1):*** 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.<br><br>***CPR 10.2:*** 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. | Up to 2 marks<br><br>A pass must refer to CPR 12 and set out what it means to apply for a default judgment |
| **Credit any other relevant point to explain the procedure, e.g:**<br><br>***CPR 6:*** Date of service is determined by the rules set out within.<br><br>***Form N225:*** 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.<br><br>***CPR PD 12, para 4.1:*** Both on a request and on an application for default judgment the court must be satisfied that the particulars of | Up to 4 marks<br><br>A pass must refer to CPR 12 and set out what it means to apply for a default judgment |

| | |
|---|---|
| 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. | |
| **Could also include a discussion on circumstances when a DJ may not be obtained or when permission of the court may be needed, e.g:**<br><br>***CPR 12.2:*** 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.<br><br>***CPR 12.10:*** 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. | Up to 3 marks<br><br>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 when a DJ may not be obtained or permission may be needed. |
| **Credit a discussion on setting aside a default judgment, e.g:**<br><br>***CPR 13.2:*** 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. D has complied with the rules.<br><br>***CPR 13.3:*** 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.<br><br>***Page v Champion Financial Ltd [2014]:*** 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.<br><br>***Gentry v Miller [2016]:*** 4 months after DJ was obtained, D's insurance company sought to have the DJ set aside on the grounds that the parties had colluded in a fraudulent claim. Although the | Up to 3 marks<br><br>To achieve more than a pass a candidate must not simply cite the rules but should show a deeper understanding of the rules which may include an explanation about setting aside a DJ. |

| | |
|---|---|
| insurer had shown that it had a real prospect of successfully defending the claim, it had not made the application promptly when, by the exercise of reasonable diligence, it ought to have done so. The application to set aside the default judgment was refused.<br><br>***Stanley v London Borough Tower Hamlets [2020]:*** The claimant's solicitor posted particulars of claim on 25 March – two days after the UK went into lockdown – knowing the council had to acknowledge service by 9 April. The judgment in default was set aside. The judge acknowledged the need to enforce compliance with the rules and to conduct litigation at proportionate cost, but said it was 'unconscionable' for the claimant to benefit from the Covid-19 crisis. | |
| **Credit a discussion on the costs consequences of such an application, e.g:**<br><br>***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.<br><br>***CPR 45.1 (2) (a)(i):*** This section applies where judgment in default is obtained.<br><br>***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.<br><br>***CPR 45.1 (4):*** Any appropriate court fee will be allowed in addition to the costs set out in this Section.<br><br>***CPR 45.1 (5):*** The claim form may include a claim for fixed commencement costs.<br><br>***CPR 45.2:*** Amount of fixed commencement costs in a claim for the recovery of money or goods<br><br>***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 form is to be used for determining the band in Table 1 that applies to the claim.<br><br>***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.<br><br>***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 | Up to 2 marks |

| | |
|---|---|
| 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 the application of qualified one-way costs shifting in a personal injury matter and how it represents a departure from the general rule that the loser pays the winner's costs. |
| **Total Marks Attainable**<br><br>Fail = 0-4.9<br>Pass = 5+<br>Merit = 6+<br>Distinction = 7+ | 10 |
| **Indicative Content** | **Marks** |
| **Required (candidates are required to explore what QOCS is):**<br><br>***CPR 44.2(1):*** The Court retains discretion as to costs and QOCS does not impact this.<br><br>***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.<br><br>***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:**<br><br>***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<br><br>***QOCS:*** will not apply to applications for pre-action disclosure.<br><br>***CPR 44.17:*** QOCs will not apply where the claimant had entered into a 'pre-commencement funding arrangement'.<br><br>***CPR 48:*** defines a pre-commencement funding arrangement (essentially a CFA entered into before 1 April 2013).<br><br>***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]. | Up to 2 marks |

| | |
|---|---|
| **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:**<br><br>***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.<br><br>***CPR 36:*** This covers a situation where a claimant fails to beat a defendant's Part 36 offer.<br><br>***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:**<br><br>***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.<br><br>***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:**<br><br>***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.<br><br>***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].<br><br>***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 | Up to 4 Marks |

| | |
|---|---|
| provision of care, earnings paid by an employer or medical expenses) the court can make an order for costs against that other person.<br><br>***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.<br><br>***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.<br><br>***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].<br><br>***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:**<br><br>***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<br><br>***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] | Up to 2 marks |

| | |
|---|---|
| **Question 3:** | Describe the authority that should be considered where the court is considering making an order that a Costs Lawyer is personally liable for costs. |
| **Total Marks Attainable**<br><br>Fail = 0-4.9 | 10 |

| | |
|---|---|
| Pass = 5+<br>Merit = 6+<br>Distinction = 7+ | |
| **Indicative Content** | **Marks** |
| **Required - a discussion on the Courts general discretion as to costs e.g:**<br><br>***Section 51 of the Senior Courts Act 1981 and CPR 44.2:*** Costs payable by one party to another are the discretion of the court.<br><br>***CPR 44.2(4):*** Court may consider a number of factors when determining what type of order to make.<br><br>***CPR 44.2(5):*** Court can consider conduct when making an order for costs | Up to 2 marks<br><br>To pass candidates must demonstrate their understanding of the court's discretion |
| **Credit the identification of key legislative provisions e.g:**<br><br>***Section 51(3) of the Senior Courts Act 1981:*** The court shall have full power to determine by whom and to what extent the costs are to be paid.<br><br>***Section 51(6) of the Senior Courts Act 1981:*** 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.<br><br>***Section 51(7) of the Senior Courts Act 1981:*** Wasted costs means any 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.<br><br>***Section 51(7A) of the Senior Courts Act 1981:*** 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. | Up to 4 marks<br><br>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 |
| **Credit the identification of key provisions of the CPR and associated PDs e.g:**<br><br>***CPR 46.8(2):*** 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.<br><br>***CPR 46.8(3)(a):*** When the court makes a wasted costs order, it will specify the amount to be disallowed or paid. | Up to 4 marks<br><br>To achieve more than a pass, candidates must not simply cite law but should show a greater depth to their knowledge base |

| | |
|---|---|
| ***CPR 46.8(3)(b):*** 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.<br><br>***CPR 46 PD 5.2:*** 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.<br><br>***CPR 46 PD 5.3:*** The court may make a wasted costs order against a legal representative on its own initiative.<br><br>***CPR 46 PD 5.4:*** 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.<br><br>***Wasted costs applications:*** Should be left until the end of the trial. | and apply the authority to the question posed |
| **Candidates should be credited for any reference to appropriate case authority e.g:**<br><br>***Ridehalgh v Horsefield (1994)*:** A mere mistake is not sufficient for a wasted costs order, there must be unreasonable, improper or negligent conduct.<br><br>***Orchard v SE Electricity Board (1987):*** Wasted costs orders should not be used as a threat.<br><br>***Harley v McDonald (2001):*** Wasted costs orders are discretionary.<br><br>***Kiam v MGN Limited No2 [2002]:*** Conduct must be unreasonable to a high degree. 'Unreasonable' in this context does not mean merely wrong or misguided in hindsight.<br><br>***Wates Construction Limited v HGP Greentree Alchurch Evans Limited [2006]:*** 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.<br><br>***Cancino [2015]:*** An Immigration and Asylum Tribunal decision. The respondent must be alerted to the possibility of a WCO, must be apprised of the case against him and must be given adequate time and opportunity to respond.<br><br>***Noorani v Calver [2009]:*** Indemnity costs orders are no longer limited to cases where the court wishes to express disapproval of the way in which litigation has been 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. | Up to 3 marks<br><br>To achieve a merit or distinction, candidates will refer to decisions made by the courts to explain how the legislative provisions operate. |

| | |
|---|---|
| ***Awuah and Others [2017]:*** An Immigration and Asylum Tribunal decision. A WCO 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 WCO of its own motion with restraint. | |

| | |
|---|---|
| **Question 4:** | Describe the provisions relating to client money found in the Costs Lawyer Code of Conduct and CLSB Practising Rules. |
| **Total Marks Attainable**<br><br>Fail = 0-7.4<br>Pass = 7.5+<br>Merit = 9+<br>Distinction = 10.5+ | 10 |
| **Indicative Content** | **Marks** |
| **Must include a discussion as to what client money is, e.g:**<br><br>***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.<br><br>***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.<br><br>***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).<br><br>***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.<br><br>***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.<br><br>***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:** | Up to 5 marks |

| | |
|---|---|
| ***Principle 3 of the CLSB Code of Conduct:*** Generally is about acting in the best interests of the client<br><br>***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.<br><br>***CLSB Practising Rules:*** There is no mention of the CLs handling client money in the CLSB Practising Rules.<br><br>***Section 1 LSA 07:*** 8 regulatory objectives.<br><br>***Section 20 LSA 07:*** Approved regulators. ACL is named as the approved regulator but the CLSB have the delegated functions. | |
| **May also include a discussion on the definition of "proper professional fees" and disbursements e.g:**<br><br>***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.<br><br>***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).<br><br>***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**<br><br>***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.<br><br>***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.<br><br>***Interim billing:*** Arrangements can be agreed with a client to reduce financial exposure on payment for services provided and reimbursement for disbursements. | Up to 2 marks |

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

| | |
|---|---|
| **Question 5:** | You work for Beaton & Beaton Solicitors, a firm based in Birmingham. You are currently undertaking some work for the litigation department and Morris Beaton, a partner at the firm, has asked for you to write to his client, Miss Gemma Smith.<br><br>Gemma was involved in a road traffic accident on 10 March 2019. She was on her way to work driving her car along the A465 towards Dewberry. It was a new car and she wasn't yet confident driving it. She was driving at about 45 mph, just over the speed limit of 40mph. She approached a sharp right-hand bend in the road and as she entered the bend, she saw a tractor travelling on the opposite side of the road, moving very slowly. Suddenly a vehicle overtook the tractor.<br><br>Gemma thought that the driver of the car flashed his lights at her but does not recall hearing a horn being sounded. She said that she braked heavily and swerved left into the kerb. The cars collided. Both vehicles came to rest on Gemma's side of the road and Gemma's recollection is that the other car was on the wrong side of the road when the accident happened. The police and ambulance services attended the scene and both drivers were taken to Hospital.<br><br>Proceedings were issued on the 15 August 2019. Following the filing of the defence, a letter was received from the Defendant's solicitors making it clear that they felt the only appropriate resolution of the claim was for Gemma to discontinue her claim. Upon review of the evidence, Mr Beaton also thinks it would be appropriate for Gemma to consider discontinuing the claim. He has therefore asked for you to draft some preliminary advice to Gemma about the procedure by which a claimant may discontinue their claim.<br><br>Write the body of a letter to Miss Smith advising when a claimant may discontinue a claim, when discontinuance would take effect and the costs consequence of discontinuance. |
| **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: a claimant may discontinue all or part of a claim at any time, 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, 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, the fact that the presumption must be displaced and the relevance of the provisions in CPR 44.13-17. Candidates will demonstrate a good depth of knowledge of the subject (i.e. a good understanding of the procedure and impact of discontinuance) 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 the matter is a PI case where the claimant will be afforded the protection of QOCs and candidates will show a clear understanding as to how the common law and legislation would apply. 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 a discussion on when a claim may be discontinued e.g:**<br><br>***CPR 38.2(1):*** A claimant may discontinue all or part of a claim at any time.<br><br>***CPR 38.2 (2):*** 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).<br><br>***CPR 38.2 (3):*** Where there is more than one defendant, the claimant may discontinue all or part of a claim against all or any of the defendants. | Up to 3 Marks |

| | |
|---|---|
| **Discussion on the Procedure for discontinuing e.g:**<br><br>***CPR 38.3(1):*** 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.<br><br>***CPR 38.3(2):*** 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.<br><br>***CPR 38.3(3):*** Where the claimant needs the consent of some other party, a copy of the necessary consent must be attached to the notice of discontinuance.<br><br>***CPR 38.3(4):*** Where there is more than one defendant, the notice of discontinuance must specify against which defendants the claim is discontinued. | Up to 4 Marks |
| **Credit any discussion on the impact of discontinuance e.g:**<br><br>***CPR 38.5(1):*** Discontinuance against any defendant takes effect on the date when notice of discontinuance is served on him.<br><br>***CPR 38.5(2):*** The proceedings are brought to an end as against him on that date.<br><br>***CPR 38.5(3):*** However, this does not affect proceedings to deal with any question of costs. | Up to 3 marks |
| **Candidates should include a discussion on the costs consequence of discontinuance e.g:**<br><br>***CPR 38.6(1):*** 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.<br><br>***CPR 38.6(2):*** 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 liable to pay must not be assessed until the conclusion of the rest of the proceedings.<br><br>***CPR 38.6(3):*** This rule does not apply to claims allocated to the small claims track.<br><br>***Brookes v HSBC Bank [2011]:*** 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. | Up to 10 marks |

| | |
|---|---|
| ***Nelsons Yard Management v Eziefula [2013]:*** 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.<br><br>***Barker v Barnett [2015]:*** The defendant's conduct led to the defendant paying part of the claimant's Costs.<br><br>***Sheinberg v Abdon [2019]:*** The defendant's conduct led to there being no order for costs. No costs shifting.<br><br>***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.<br><br>***Sanderson v Blyth Theatre Company [1903]:*** 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.<br><br>***Bullock v London General omnibus [1907]:*** 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 any discussion on setting aside a notice of discontinuance e.g:**<br><br>***CPR 38.4(1):*** Where the claimant discontinues under rule 38.2(1) the defendant may apply to have the notice of discontinuance set aside.<br><br>***CPR 38.4(2):*** The defendant may not make an application under this rule more than 28 days after the date when the notice of discontinuance was served on him.<br><br>***CPR 44.15:*** 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.<br><br>***Kite v Phoenix Pub Group [2015]:*** Application to strike out and 2 days before it was heard the claimant discontinued. The District judge set aside notice of discontinuance and claim struck out.<br><br>***Shaw v Medtronic Corevalve LLC and others [2017]:*** The claimant is entitled to discontinue, the notice of discontinuance in this case was not set aside. There is a distinction between a claim being struck out and set aside, this may be a lacuna in the rules. | Up to 4 Marks |

| | |
|---|---|
| **Question 6:** | You work in house for an SRA regulated firm, Bobtail and Sparrow LLP, specialising in medical negligence matters. One of the partners, Angela Sparrow, acted for Jemimah Jefferies in her claim against Derby Hospitals NHS Foundation Trust. The claim was funded |

| | |
|---|---|
| | under a conditional fee agreement (CFA) and by way of an After the Event (ATE) policy.<br><br>The Claimant miscarried her baby in February 2018. In June 2018 an ultrasound scan detected retained products which were promptly removed. Solicitors were instructed and the CFA was signed in July 2018. The patient accepted the NHS's part 36 offer to settle for compensation of £7500 in July 2019. No court proceedings were ever issued.<br><br>A bill of costs has been drawn and it includes a claim for an ATE insurance premium in the sum of £5,088 in respect of the fees incurred for liability experts. The total of the bill of costs is £27,714.44.<br><br>The premium claimed is for a block-rated ATE insurance set by reference to a wide "basket" of cases, rather than being individually assessed. Bobtail and Sparrow LLP were obliged through their contract with the ATE insurer to offer the policy to their client.<br><br>Angela Sparrow has now received Points of Dispute in relation to the bill of costs. The points challenge the premium and state:<br><br>a) It is a matter of public importance that the court ensures that ATE premiums, if held to be recoverable in principle, are assessed in proportionate and reasonable sums because of the potential substantial impact on the public purse.<br><br>b) Ms Jefferies' prospects of losing the case were very low and that an appropriate premium sum of £827.75 should be allowed because of comparable alternative products that were available.<br><br>Angela now seeks your advice on the recoverability of the premium.<br><br>Write the body of a memo to Angela Sparrow advising on the recoverability of the ATE premium in this matter and advise on the possibility of the premium being reduced on assessment. |
| **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: 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+ | An answer which addresses ALL 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. 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 when a costs order may be made 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. |

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:**<br><br>***Generally:*** The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) renders that ATE premiums are no longer recoverable from the paying party.<br><br>***Section 46(1) of the Legal Aid Sentencing and Punishment of Offenders Act 2012:*** 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.<br><br>***Section 58C(1) of the Courts and Legal Services Act 1990:*** 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 subsection section 58C(2) of the Courts and Legal Services Act 1990. | Up to 6 marks |

| | |
|---|---|
| ***Section 58C(2) of the Courts and Legal Services Act 1990:*** The Lord Chancellor may make regulations in clinical negligence cases permitting for the recovery of ATE premiums in relations to medical experts reports.<br><br>***Recovery of Costs Insurance Premiums in Clinical Negligence Proceedings (No 2) Regulations 2013:*** 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.<br><br>***Peterborough & Stamford Hospital NHS Trust v McMenemy [2017]:*** 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 any discussion on the court's discretion, e.g:**<br><br>***Section 51 of the Senior Courts Act 1981 and CPR 44.2:*** 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).<br><br>***CPR 44.3(2):*** 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.<br><br>***CPR 44.3 (3):*** 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. | Up to 2 marks |
| **Credit any discussion on potential challeneges, e.g:**<br><br>***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.<br><br>***Emily Nokes v Heart of England Foundation NHS Trust [2015]:*** Identifying which part of the premium relates to experts' reports may be difficult. In this case the defendant argued that the premium was not recoverable because there were two separate | Up to 2 marks |

| | |
|---|---|
| parts to the premium and it was argued the policy did not comply with the new regulations. | |
| **Candidate should refer to the proportionality tests, e.g:**<br><br>***The tests of proportionality:*** Lownds v Home Office 2002 for old test and CPR 44.3(2) and (5) for new test.<br><br>***Lownds v Home Office 2002:*** Approach (item by item then stand back) (items disproportionate but necessary are recoverable) applicable.<br><br>***CPR 44.3(5)(a) to (e):*** Lists the 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.<br><br>***Whatever basis:*** Reasonableness would always be considered. | Up to 2 marks |
| **Candidates should have developed their discussion on what challenges may be made as to the proportionality of the premium, e.g:**<br><br>***BNM v MGN Ltd [2016]:*** Master Gordon-Saker, amongst other things, considered whether the new test of proportionality should apply to recoverable premiums. In this case, at first instance, it was decided that the new test of proportionality does apply to recoverable premiums.<br><br>***King v Basildon & Thurrock Hospital NHS Trust [2016]:*** The test of proportionality in CPR 44.3(5) did not apply to additional liabilities. The proportionality of additional liabilities should be dealt with under the old rules which existed before the Legal Aid, Sentencing and Punishment of Offenders Act 2012 came into force.<br><br>***Murrell v Cambridge University Hospital NHS Trust [2017]:*** confirmed the old test was applicable, the new definition of costs under CPR 44.1 did not include additional liabilities.<br><br>***BNM v MGN Ltd [2017]:*** Two stage approach: Line by line reduction considering reasonableness and then a line by line reduction considering proportionality. New definition of costs does not include additional liabilities in pre-LAPSO CFAs. CPR44.3(5) does not apply to additional liabilities even if ATE incepted after 1 April 2013.<br><br>***May v Wavell Group [2016]:*** **T**wo stage approach: Line by line considering reasonableness and then a broad brush deduction to reach a 'proportionate' figure. | Up to 9 marks |

| | |
|---|---|
| ***May v Wavell Group [2017]:*** The CPR do not state that test has to be undertaken in two stages but likely that when the test is applied there would be a two-stage assessment. Whether the relationship is reasonable is a matter of judgment, rather than discretion, which requires attribution of weight, and sometimes no weight, to each of the factors in CPR 44.3(5)(a) to (e).<br><br>***Mitchell v Gilling Smith [2017]:*** An unreported SCCO decision, held that CPR 44.3(5) did apply to post LASPO premiums and that arguments based on hindsight were irrelevant for the purpose of CPR 44.3(5). In this case an after-the-event insurance premium of £10,000 for costs relating to medical experts' reports was held not to be disproportionate in a clinical negligence claim that settled for £200,000 even though only the sum of £2,000 was ultimately paid for expert evidence.<br><br>***Peterborough & Stamford Hospital NHS Trust v McMenemy [2017]:*** ATE premium taken out after 1 April 2013, Court of Appeal held that the new 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. The Court require expert evidence if a premium is to be challenged. *Callery* remains good law.<br><br>***West and Demouilpied v Stockport NHS Foundation Trust [2020]:*** 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. *Callery* remains good law. | |
| **Candidates should have developed their discussion on what challenges may be made as to the reasonableness of the premium, e.g:**<br><br>***Callery v Gray (No 2) [2001]:*** A costs judge was asked by the Court of Appeal to investigate the reasonableness of the ATE premium. The following points were made: 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 | Up to 3 marks |

| | |
|---|---|
| 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.<br><br>***Callery v Gray (No 2) [2002]:*** 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. This was a Supreme Court decision.<br><br>***Rogers v Merthyr Tydfil [2007]:*** Followed the decision in Callery v Gray.<br><br>***Peterborough & Stamford Hospital NHS Trust v McMenemy [2017]:*** Confirmed that Callery v Gray and Rogers v Merthyr Tydfil were still good law.<br><br>***Allan Coleman v Medtronic Ltd [2016]:*** The case determined that a claimant will not be held to be unreasonable even when taking out ATE insurance to protect. | |

| | |
|---|---|
| **Question 7:** | You work as a costs lawyer for Quick Smart Costs, a costs firm in the North of England. You have recently been asked by the Head of Billing to undertake some work for a new client, Bodger and Badger LLP.<br><br>Your contact at Bodger and Badger LLP is Henry Carton, a paralegal at the SRA regulated firm. Henry has sent you a file which requires a bill of costs to be drawn. The file is a personal injury matter, a Noise Induced Hearing Loss claim, that settled for £2750 damages. Harry has instructed that the fee earner with conduct of the matter is a grade C Solicitor with 3 years litigation experience.<br><br>You draft the bill but in accordance with your usual practice you check the experience of the fee earner and discover her Linkedin profile states she has worked for Bodger and Badger LLP for 18 months and it does not appear she has any previous legal experience or qualifications. Accordingly, you telephone Henry to discuss how to proceed.<br><br>Upon phoning Bodger and Badger LLP you are informed by the receptionist that Harry is out for lunch and he is not expected to return to the office that afternoon so you leave a voicemail for Harry setting out the position and asking him to confirm that he is happy for you to describe the lead fee earner as a paralegal and use a Grade D rate. Later that afternoon Harry emails and sets out |

| | |
|---|---|
| | that his instructions were clear and that a grade C should be claimed.<br><br>You believe that you are being asked to make a fraudulent misrepresentation in relation to the level of experience of the fee earner and discuss the same with the Head of Billing. He advises that you should draft an email to Harry setting out that you are regulated by the CLSB and have a duty not to mislead the Court.<br><br>Write the body of an email to Harry setting out what it means to be regulated, outlining your duty to the Court and the potential ramifications for you if you follow his instructions. |

| | |
|---|---|
| **Total Marks Attainable**<br><br>Fail = 0-9.9<br>Pass = 10+<br>Merit = 12+<br>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, a discussion on the potential ramifications in terms of the CLSB and risk of wasted costs orders. 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 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 legislative framework governing the regulation of authorised persons, e.g:**<br><br>***Section 18 of the Legal Services Act 2007:*** Defines authorised persons as a person who is authorised to carry on the relevant | Up to 2 Marks<br><br>An explanation should be given as to what it means to |

| | |
|---|---|
| activity by a relevant approved regulator in relation to the relevant activity 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.<br><br>***Section 20 of the Legal Services Act 2007:*** Defines an approved regulator as a body which is designated as an approved regulator by Schedule 4.<br><br>***Section 20(5) of the LSA 07 and Schedule 4:*** ACL is approved regulator, approved regulators under the LSA regulate those undertaking reserved legal activities who are known as authorised persons.<br><br>***Memorandum of Understanding:*** Between ACL and the CLSB delegates the regulatory function to the CLSB. | be an authorised person |
| **Candidates should explain the what it means to be an authorised person, specifically a costs lawyer, e.g:**<br><br>***Section 12 and Sch 2 of the Legal Services Act 2007:*** Defines reserved legal activities. Exercise of rights of audience – relevant to Costs Lawyer's Role, Conduct of litigation – relevant to Costs Lawyer's Role, Reserved instrument activities, Probate activities, Notarial activities, Administration of oaths – relevant to Costs Lawyer's Role.<br><br>***Section 13(1) of the Legal Services Act 2007:*** Any question of entitlement is determined solely in accordance with the LSA 07.<br><br>***Section 13(2)(a) of the Legal Services Act 2007:*** A person is entitled to carry on a reserved legal activity where that person is authorised in relation to the activity in question.<br><br>***Section 13(2)(b) of the Legal Services Act 2007:*** 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.<br><br>***Section 176(1) of the LSA 2007:*** Costs Lawyers must adhere to CLSB code of Conduct. Breach will result in disciplinary proceedings by CLSB.<br><br>***Section 176(2)(b) of the LSA 2007:*** 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. | Up to 2 marks |
| **Credit discussion of the costs lawyer's duty to the court, e.g:**<br><br>***CLSB Code of Conduct Principle 2:*** Comply with your duty to the court in the administration of justice. | Up to 10 Marks |

| | |
|---|---|
| ***CLSB Code of Conduct Principle 2.1:*** Costs Lawyers must at all times act within the law.<br><br>***CLSB Code of Conduct Principle 2.2:*** Costs Lawyers must not knowingly or recklessly either mislead the court or allow the court to be misled.<br><br>***CLSB Code of Conduct Principle 2.3:*** Costs Lawyers must comply with any court order which places an obligation on them and they must not be in contempt of court.<br><br>***CLSB Code of Conduct Principle 2.4:*** Costs Lawyers must advise clients to comply with court orders made against them.<br><br>***CLSB Code of Conduct Principle 3:*** Act in the best interests of your client.<br><br>***CLSB Code of Conduct Principle 3.1:*** 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.<br><br>***Ahmed v Powell [2003]:*** 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.<br><br>***Crane v Canons Leisure Centre [2007]:*** 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.<br><br>***Waterson Hicks v Eliopoulos [1997]:*** The costs draftsman has the same authority as the solicitor would have had to consent to orders.<br><br>***Arthur J S Hall & Co v Simmons [2007]:*** Lord Hoffman (at page 691): "*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*"<br><br>***Buxton v Mills-Owens [2010]:*** If a point is not properly arguable, it should not be argued.<br><br>***Rondel v Worsley [1967]:*** A claimant's civil action for negligence could not be sustained: a barrister's immunity was justified by public policy. | |

| | |
|---|---|
| ***Saif Ali v Sydney Mitchell [1978]:*** The immunity conferred by *Rondel v Worsley* extends 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.<br><br>***Moy v Pettmann Smith (A Firm) & Anor [2005]:*** The barrister was not negligent. The principle that an advocate is liable to his client for professional negligence in *Arthur JS Hall v Simons [2002]* 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. Lady Hale said that the courts "have not yet developed a clear set of principles governing the terms in which an advocate's advice should be given".<br><br>***Copeland v Smith [2002]:*** 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 a discussion on the CLSB Practising Rules, e.g:**<br><br>***CLSB Practising Rules:*** These Rules govern the practice of Costs Lawyers and the issue and revocation of practising certificates by the CLSB.<br><br>***Rule 1 of the CLSB Practising Rules:*** The right to practise as a Costs Lawyer. 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.<br><br>***Rule 4 of the CLSB Practising 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.<br><br>***Rule 8 of the CLSB Practising Rules:*** A Practising Certificate may be revoked by the CLSB.<br><br>***Rule 10 of the CLSB Practising Rules:*** Costs Lawyers must ensure that they have professional indemnity insurance. | Up to 3 Marks<br><br>To achieve a distinction candidates should demonstrate a sound ability to apply the law to the facts of the scenarios presented together with knowledge of how funding certificates operate generally. |
| **Credit a discussion on the liability of a costs lawyer/instructing solicitor, e.g:**<br><br>***Professional Misconduct:*** This is generally taken to mean breaches of the conduct rules and principles committed in the course of practicing as a costs lawyer. | Up to 3 marks |

| | |
|---|---|
| ***Unbefitting Conduct:*** This may generally be defined as conduct by a lawyer which ought to render him as unfit to be an officer of the court (*Re Southerton* (1805))<br><br>***Breach of duty:*** This is something that gives rise to an action in law, for example in contract or tort.<br><br>***Bailey v IBC Vehicles Ltd [1998]:*** Proceedings are usually issued in the solicitor client's name, and it is the solicitor client that is responsible for the contents of the bill drafted by a costs lawyer.<br><br>***Ahmed v Powell [2003]:*** 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.<br><br>There may be some consideration and discussion of the indemnity principle and this should be credited if correct. | |
| **Credit a discussion on wasted costs orders, e.g:**<br><br>***Section 51 of the Senior Courts Act 1981 and CPR 44.2:*** Costs payable by one party to another are the discretion of the court.<br><br>***CPR 44.2(4):*** Court may consider a number of factors when determining what type of order to make.<br><br>***CPR 44.2(5):*** Court can consider conduct when making an order for costs<br><br>***Section 51(3) of the Senior Courts Act 1981:*** The court shall have full power to determine by whom and to what extent the costs are to be paid.<br><br>***Section 51(6) of the Senior Courts Act 1981:*** 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.<br><br>***Section 51(7A) of the Senior Courts Act 1981:*** 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.<br><br>***Examples of case authority that may be considered:*** 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]. | Up to 3 Marks |

| | |
|---|---|
| **Question 8:** | You work in the costs department for an SRA regulated firm, Harp and Harris LLP. You are contacted by an old friend, Akio Lee, who heads the litigation department at a firm in Bournemouth. Akio asked if you would consider taking external instructions to do costs work. Unfortunately, the head of your department is not keen on the idea and you have to decline the work.<br><br>Two days later, you receive an email from Akio asking for your help. He has contacted a number of costs firms and, other than price, cannot decide what criteria he should use to help him decide who to instruct. He tells you that he has identified two potential suppliers to send the work to, both are sole traders, but one describes herself as a costs lawyer and the other describes himself as a costs consultant.<br><br>Akio provides you with the names of the two costs professionals and you discover that one of the individuals is regulated and the other is not. You have no knowledge of their competence but wish to set out for Akio what this may mean for him when arriving at a decision of who to instruct.<br><br>Write the body of an email to Akio setting out any potential benefits an SRA firm may gain from instructing an external regulated costs professional over a costs professional that is not regulated. |
| **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 third party funding, or any view expressed will be unsupported by evidence or authority. |
| 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. Candidates MAY have commented on the ability to claim higher hourly rates for some work. Some key authority may 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 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:**<br><br>***Section 18 of the Legal Services Act 2007:*** Defines authorised persons as a person who is authorised to carry on the relevant activity by a relevant approved regulator in relation to the relevant activity 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.<br><br>***Section 20 of the Legal Services Act 2007:*** Defines an approved regulator as a body which is designated as an approved regulator by Schedule 4.<br><br>***Section 20(5) of the LSA 07 and Schedule 4:*** ACL is approved regulator, approved regulators under the LSA regulate those undertaking reserved legal activities who are known as authorised persons.<br><br>***Memorandum of Understanding:*** Between ACL and the CLSB delegates the regulatory function to the CLSB. | Up to 3 marks<br><br>In order to achieve a pass, candidates must (albeit not explicitly) describe what it means to be an authorised person |
| **Credit a discussion on the rights a Costs Lawyer has to undertake reserved legal activities, e.g:**<br><br>***Section 12 and Sch 2 of the Legal Services Act 2007:*** Defines reserved legal activities. Exercise of rights of audience – relevant to Costs Lawyer's Role, Conduct of litigation – relevant to Costs Lawyer's Role, Reserved instrument activities, Probate activities, Notarial activities, Administration of oaths – relevant to Costs Lawyer's Role. | Up to 3 marks |

| | |
|---|---|
| ***Section 13(1) of the Legal Services Act 2007:*** Any question of entitlement is determined solely in accordance with the LSA 07.<br><br>***Section 13(2)(a) of the Legal Services Act 2007:*** A person is entitled to carry on a reserved legal activity where that person is authorised in relation to the activity in question.<br><br>***Section 13(2)(b) of the Legal Services Act 2007:*** 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. | |
| **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:**<br><br>***Section 176(1) of the LSA 2007:*** Costs Lawyers must adhere to CLSB code of Conduct. Breach will result in disciplinary proceedings by CLSB.<br><br>***Section 176(2)(b) of the LSA 2007:*** 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.<br><br>***CL Code of Conduct:*** CLSB set and publish the CL Code of Conduct (2014 amendments) x7 principles<br><br>***CLSB Code of Conduct Principle 1:*** Act with integrity and professionalism.<br><br>***CLSB Code of Conduct Principle 2:*** Comply with your duty to the court in the administration of justice.<br><br>***CLSB Code of Conduct Principle 2.1:*** Costs Lawyers must at all times act within the law.<br><br>***CLSB Code of Conduct Principle 2.2:*** Costs Lawyers must not knowingly or recklessly either mislead the court or allow the court to be misled.<br><br>***CLSB Code of Conduct Principle 2.3:*** Costs Lawyers must comply with any court order which places an obligation on them and they must not be in contempt of court.<br><br>***CLSB Code of Conduct Principle 2.4:*** Costs Lawyers must advise clients to comply with court orders made against them.<br><br>***Principle 3 of the CLSB Code of Conduct:*** Act in the best interests of your client. | Up to 8 marks<br><br>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. |

| | |
|---|---|
| ***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.<br><br>***CLSB Code of Conduct Principle 4:*** Provide a good quality of work and service to each client.<br><br>***CLSB Code of Conduct Principle 4.1:*** Only undertake work for which you are properly qualified.<br><br>***CLSB Code of Conduct Principle 4.2:*** Work must be undertaken with due skill, care and attention, with proper regard for the technical standard expected of you.<br><br>***CLSB Code of Conduct Principle 5:*** Deal with the regulators and Legal Ombudsman in an open and co-operative way.<br><br>***CLSB Code of Conduct Principle 5.1:*** You must promptly notify the CLSB of any breach of this Code by yourself or other Costs Lawyers.<br><br>***CLSB Code of Conduct Principle 6:*** Treat everyone with dignity and respect.<br><br>***CLSB Code of Conduct Principle 6.3:*** Must make reasonable adjustments for those with a disability to ensure they are not at a disadvantage in comparison with those without disabilities.<br><br>***CLSB Code of Conduct Principle 7:*** Keep your work on behalf of your clients confidential. | |
| **Credit a discussion on the CLSB Practising Rules, e.g:**<br><br>***CLSB Practising Rules:*** These Rules govern the practice of Costs Lawyers and the issue and revocation of practising certificates by the CLSB.<br><br>***Rule 1 of the CLSB Practising Rules:*** The right to practise as a Costs Lawyer. 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.<br><br>***Rule 4 of the CLSB Practising 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.<br><br>***Rule 8 of the CLSB Practising Rules:*** A Practising Certificate may be revoked by the CLSB. | Up to 4 marks<br><br>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. |

| | |
|---|---|
| ***Rule 10 of the CLSB Practising Rules:*** Costs Lawyers must ensure that they have professional indemnity insurance. | |
| **Credit a discussion on the solicitor maintaining responsibility for assessment proceedings, e.g:**<br><br>***Rule 2 of the SRA Code of Conduct for Firms:*** This rule is entitled compliance and business systems.<br><br>***A risk management policy:*** Having a risk management policy would make it easier for the SRA to engage with firms with a view to resolving any compliance issues. Such a policy would outline the risks posed to a business and provides a set of actions to be taken to both prevent the risk from occurring and reduce the impact of the risk should it happen.<br><br>***Rule 2.1(a) of the SRA Code of Conduct for Firms:*** Requires that firms must have effective governance structures, arrangements, systems and controls in place that ensure compliance with all the SRA's regulatory arrangements, as well as with other regulatory and legislative requirements, which apply.<br><br>***Rule 2.1(b) of the SRA Code of Conduct for Firms:*** Requires that firms must have effective governance structures, arrangements, systems and controls in place that ensure compliance by managers and employees with the SRA's regulatory arrangements which apply to them.<br><br>***Rule 2.1(c) of the SRA Code of Conduct for Firms:*** Requires that firms must have effective governance structures, arrangements, systems and controls in place that ensure compliance by managers and interest holders and those employed or contracted do not cause or substantially contribute to a breach of the SRA's regulatory arrangements.<br><br>***Rule 2.1(d) of the SRA Code of Conduct for Firms:*** Requires that firms must have effective governance structures, arrangements, systems and controls in place that ensure compliance officers are able to discharge their duties.<br><br>***Rule 2.2 of the SRA Code of Conduct for Firms:*** Requires firms to keep and maintain records to demonstrate compliance with your obligations under the SRA's regulatory arrangements.<br><br>***Rule 2.3 of the SRA Code of Conduct for Firms:*** Requires firms to remain accountable for compliance with the SRA's regulatory arrangements where work is carried out through others, including managers and those employed or contracted with. | Up to 3 Marks |

| | |
|---|---|
| ***Rule 2.4 of the SRA Code of Conduct for Firms:*** Requires firms to actively monitor financial stability and business viability.<br><br>***Rule 2.5 of the SRA Code of Conduct for Firms:*** Requires firms to identify, monitor and manage all material risks to the business, including those which may arise from connected practices. | |
| **Credit a discussion on the solicitor maintaining responsibility for assessment proceedings, e.g:**<br><br>***Ahmed v Powell [2003]:*** 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.<br><br>***Crane v Canons Leisure Centre [2007]:*** 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.<br><br>***Waterson Hicks v Eliopoulos [1997]:*** The costs draftsman has the same authority as the solicitor would have had to consent to orders.<br><br>***CPR PD 42, 2.5:*** Practice form N434 should be used to give notice of any change. The notice should be filed in the court office in which the claim is proceeding. | Up to 3 marks<br><br>To achieve more than a pass, candidates must not simply cite law but should show a greater depth to their knowledge base |

| | |
|---|---|
| **Question 9:** | You are a costs lawyer who heads the costs and accounts department at Sidney Weaver LLP, a large high street firm in Saint Albans. The role requires you to work closely with the COFA at the firm, Bob Andrews.<br><br>Sidney Weaver LLP have a large residential property department and, following a recently published report on the disparity of legal costs in different regions of the Country, have started to get a lot of instructions from clients based in the London area. This has meant that the firm have had to recruit a lot of new members of staff for the department to cope with the increased work load.<br><br>Bob is keen to ensure that all new staff undertake mandatory training on the reason behind the checks the department takes to confirm the identity of clients and the source(s) of any funds the firm receives. He wants all new staff members, irrespective of their previous training, to be clear on the risks the firm faces which are associated with purchasing property in the UK. Therefore, Bob has approached you to write a guidance note |

| | |
|---|---|
| | that covers the definition of money laundering, the risks the firm faces and the associated offences.<br><br>Provide the body of the guidance note for Bob on the particular aspects he wishes to cover. |
| **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, e.g:** | Up to 2 marks<br><br>To achieve a pass, an explanation should be given as to what money |

| | |
|---|---|
| ***Legal Guidance, Proceeds Of Crime Act 2002 Part 7 - Money Laundering Offences:*** Money laundering is "the process by which criminal proceeds are sanitised to disguise their illicit origins".<br><br>***Relevant Legislation and Regulations:*** 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. | laundering is and the governing legislation |
| **Candidates may discuss the SRA requirements and applicability, e.g:**<br><br>***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:*** 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.<br><br>***Regulation 8 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017:*** The regulations apply to certain categories of persons acting in the course of business carried on in the UK.<br><br>***Regulation 12(1) of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017:*** The regulations apply to independent legal professionals participating in certain financial or real property transactions. | Up to 2 marks |
| **Credit a discussion on the governance, systems and controls a firm should have in place, e.g:**<br><br>***Regulation 18 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017:*** 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.<br><br>***Regulation 19 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017:*** 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.<br><br>***Regulation 21 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017:*** 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 | Up to 5 marks |

| | |
|---|---|
| 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.<br><br>***Regulation 24 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017:*** 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 a discussion on customer due diligence, e.g:**<br><br>***Regulation 27 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017:*** 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<br><br>***Regulation 28 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017:*** 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.<br><br>***Regulation 33 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017:*** 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.<br><br>***Regulation 33(1) of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017:*** Sets 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. | Up to 7 marks |

| | |
|---|---|
| ***Regulation 37 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017:*** 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.<br><br>***Regulation 39 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017:*** Firms may rely on another person (another regulated individual) who is subject to the MLR or equivalent to carry out CDD, but you 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. | |
| **Candidates may discuss the principal money laundering offences, e.g:**<br><br>***Section 327 of the Proceeds of Crime Act 2002:*** A person will be liable 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.<br><br>***Section 328 of the Proceeds of Crime Act 2002:*** 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.<br><br>***Section 329 of the Proceeds of Crime Act 2002:*** If a person acquires, uses or possesses property for which he has not given adequate consideration, he may be liable of an offence.<br><br>***Section 45 of the Serious Crime Act 2015:*** 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.<br><br>***Section 15 of 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.<br><br>***Section 16 of the Terrorism Act 2002:*** 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. | Up to 6 marks |

| | |
|---|---|
| ***Section 18 of the Terrorism Act 2002:*** 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 any discussion on who may investigate and prosecute offences, e.g:**<br><br>***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.<br><br>***The Crown Prosecution Service:*** usually conducts criminal proceedings.<br><br>***The Serious Fraud Office:*** investigates and prosecutes matters involving serious or complex fraud or corruption.<br><br>***The Financial Conduct Authority:*** Where the allegations are linked to financial firms, the matter may be investigated or prosecuted by the Financial Conduct Authority (FCA). | Up to 2 marks |