

Examination Report

Exam Session:	December 2021
Exam Paper:	Unit 3

The purpose of the report is to provide feedback to tutors and candidates on the candidates' performance in the examination. This report contains recommendations and guidance as to the key points candidates should have included in their answers in the December 2021 Unit 3 examination.

This report is intended to be a useful document that comments on overall performance by candidates in the December 2021 Unit 3 examination, advises on how performance might be improved and indicates what should be contained in successful answers to the questions in the examination paper.

This report should be read in conjunction with the relevant examination paper and marker guidance. The suggested points for responses contained in the marker guidance are points that a response from a good (Merit/Distinction) candidate would have provided. Candidates will have received credit, where applicable, for other points not addressed by the marker guidance.

Summary of Candidate Performance

This was the third sitting of the Unit 3 examination in this format and the largest sitting to date. Within the examination the question paper assessed 100% of the learning outcomes that had not been assessed within assignments on the relevant modules. Overall, performance was good. There were mixed performances on some questions on the paper but the pass rates were very good.

All candidates that sat this paper had experience of studying law at level 6 and/or on post graduate professional qualifications before commencing the Costs Lawyer qualification. This will be the last cohort that is made up of this type of candidate, in the next exam sitting there will be students that only studied law/litigation with ACLT. Therefore, following the next exam sitting comparisons may be drawn from the performance level albeit from a relatively small sample of groups/exam sittings.

Overall, the performance of candidates on this paper showed an encouraging improvement from the previous exam sittings. It was clear that candidates had used the Revision Materials and past papers to good effect and candidates had prepared well for the examination.

In general, candidates seemed to have a good knowledge of the core areas of Costs Procedure and Assessment. As a result, most candidates were able to correctly identify the subject matter of each question and refer to at least some of the relevant points. There were very few candidates who were unable to refer to any of the correct law and procedural rules resulting in them failing to meet the required standard on individual questions. The weaker performances on this exam sitting were, again, those students that had not maximised opportunities to demonstrate they had the required knowledge to

meet all of the knowledge outcomes with breadth and depth. This was surprising, students had had ample time to prepare for the exam but some didn't appear to have spent time ensuring they could recall sufficient points of law to maximise the marks awarded to them. Without candidates identifying and citing the appropriate legal principles they were unable to demonstrate they understood how the law applied and to analyse the likely outcome based on identified points of law. Even where candidates dealt with the majority of relevant points, they didn't always make the best of the knowledge that they had. Candidates needed to be more systematic in their approach and practically apply their knowledge to the facts.

In terms of examination technique, whilst there were some flaws in the manner in which candidates approached the paper, candidates seemed to manage their time well. Most candidates were therefore able to provide coherent answers to all of the questions. The length and quality of responses varied significantly but the examination team felt that there was sufficient time to complete the exam. That being said, the final questions on the paper did appear to see a dip in pass rates. There were also occasions identified where there was definite room for improvement. As with the previous examination sittings, there were a number of candidates who didn't read the question properly or at least didn't tailor what they said to the question that was asked. This meant that some candidates simply wrote down all they knew or had prepared on a topic therefore included material that wasn't relevant or helpful. A short plan at the start of the exam or question may actually help focus the response and in turn help with time management.

There were instances where candidates performed very well on some questions achieving distinction level marks but they did not perform consistently throughout the paper. Candidates should consider how they can ensure consistency across all questions because those candidates are clearly capable of performing to a higher standard than their overall examination mark may suggest. This appeared to be a sign that students were selecting specific topics as a focus of revision rather than being prepared across a wide range of areas.

There was a total of 14 candidates that sat this paper. On the whole, the paper was completed well with 93% of candidates passing. The breakdown of the numbers of fails, passes, merits and distinctions is provided in the statistics below, along with a question by question breakdown of the whole paper.

For the purposes of moderation, a sample of papers were selected, representing 50% of the total number of submissions which is in excess of the sample required by ACLT Guidelines. The selected papers were chosen to reflect a range of marks, from the lowest to the highest. Only two markers marked the scripts which made the moderation process easier and ensured consistency in marking.

The table below sets out the data on the paper.

Number of Candidates	14
Total Fails	1
Total Pass	13
% Pass	93
% Fail	7

Classification of Marks Achieved	
% Total in Pass Band	21
% Total in Merit Band	29
% Total in Distinction Band	43

The first four questions on the paper were compulsory for all candidates and carried the lowest marks per question (10 marks). On the whole, the performance on these questions was very good. Question 2 saw a pass rate of 100%. The marks for these questions pre-moderation were in accordance with the marker guidance and no recommendation was made for an adjustment. 3 out of the 4 questions saw pass rates below the 100% with 7% of candidates failing to achieve the required standard on two questions (questions 1 and 3) and 14% of candidates failing to achieve the required standard on one question (question 4). Candidates performed best in the section A question on solicitor and client retainers (i.e question 2) where all candidates passed and 29% of candidates were awarded the maximum number of marks that were available. In addition, whilst the pass marks dipped on the other section A questions, all questions in this section saw between 14% and 29% of candidates being awarded the maximum number of marks that were available. This is a clear indicator that the questions were fair and reasonable.

For the remaining three questions on the paper, in section B, candidates were required to select these from four optional questions. 100% of candidates chose to answer questions 5 and 6. This is a common trend in examination sittings. 93% of candidates chose to answer question 7 as their third option with 7% of candidates opting to answer question 8. This assisted with both marking and moderation in terms of ensuring consistency in marks awarded in section B. Question 5 was where candidates performed best on section B in terms of pass rates (97%) and the average mark awarded on this question was 65% (mid merit).

All questions on the paper were deemed fair by the assessment team.

Candidate Performance For Question 1 – Lawyer and Client

This was a compulsory question on the paper, found within section A, the question attracted up to 10 marks. Candidates were required to explain whether all Conditional Fee Agreements are contentious business agreements and, if so, how that might affect a client's right to an Assessment of Costs under the Solicitors Act 1974.

Number of Candidates	14
Total Fails	1
Total Pass	13
% Pass	93
% Fail	7

Candidates were expected to provide an explanation of what a conditional fee agreement and contentious business agreement are. Candidates should then have explained whether all conditional fee agreements are contentious business agreements and the relevance of this, i.e the impact on assessment under the Solicitors Act 1974. Performance on this question was pleasing with a 100% pass rate. However, marks ranged from 0% (fail) to 100% (High Distinction). Despite one candidate not having attempted this question at all the average mark awarded for this question was 70% (Distinction). It is clear from the results that the majority of candidates had prepared well for this question which

is particularly pleasing since this is the first time a question on this subject matter has appeared on the examination and because this is a very topical area.

Candidate Performance For Question 2 – Lawyer and Client

This was a compulsory question on the paper, found within section A, the question attracted up to 10 marks. Candidates were required to explain the relationship between a client and their solicitor and set out when that relationship may be terminated before an action has concluded.

Number of Candidates	14
Total Fails	0
Total Pass	14
% Pass	100
% Fail	0

Candidates were required to provide a description of a retainer and discuss the principle of an entire contract. Candidates should have gone on to make reference to when a solicitor may terminate a retainer. Candidates should also have raised some points on the implications of wrongful termination by a solicitor. In addition, candidates may have been credited from the inclusion of further details on the form and content of a retainer. The pass rate on this question was excellent, with 100% of candidates achieving a pass. Marks ranged from 50% to 100% with the average mark being 80% (Higher Distinction). Candidates performed best in this question in section A of the paper. 29% of candidates were awarded the maximum number of marks that were available for the question. Candidates should be commended for their performance on this question, it was clear from the papers that candidates had prepared well.

Candidate Performance For Question 3 – Litigation Funding

This was a compulsory question on the paper, found within section A, the question attracted up to 10 marks. Candidates were required to describe the growth of third party funding in England and Wales and discuss whether there may be a need for better oversight of these type of funding arrangements.

Number of Candidates	14
Total Fails	1
Total Pass	13
% Pass	93
% Fail	7

Candidates were required to explain what third party funding is. Candidates would have been credited for a discussion on chronological developments (and the change in stance to such funding arrangements). Candidates would have been credited for a discussion on non party costs orders (and the change in stance to such funding arrangements). To ensure that they had answered the question set, candidates should also have provided a discussion on whether there should be better oversight. Candidates performed very well on this question with a 93% pass rate. Marks ranged from 40% (Fail) to 100% (High Distinction). The average mark was 80% (High Distinction) with an impressive 29% achieving all of the marks available for the question (10 Marks or 100%). This was really pleasing given the change to attitude and uptake in this type of litigation funding.

Candidate Performance For Question 4 – Litigation Funding

This was a compulsory question on the paper, found within section A, the question attracted up to 10 marks. Candidates were required to explain what a Conditional Fee

Agreement is and identify the legal provisions which set out the requirements for these agreements to be enforceable.

Number of Candidates	14
Total Fails	2
Total Pass	12
% Pass	86
% Fail	14

Candidates were required to provide an explanation of what a conditional fee agreement is. Candidates would have been credited for including a discussion on the form and operation of a conditional fee agreement. Candidates would also have been credited for reference to any other circumstances that may impact the enforceability of a CFA. Performance on this question was the poorest in section A of the paper with two candidates not performing to the level required to achieve a pass. This is disappointing given the volume of these funding arrangements that are used in practice. Marks ranged from 30% (Fail) to 100% (High Distinction) with the average mark being 70% (Distinction). During exam preparation candidates must spend time ensuring they can recall sufficient points of law to maximise the marks awarded to them, they should then approach answering questions systematically to ensure they include enough knowledge to equip them to demonstrate they know how the law operates.

Candidate Performance For Question 5 – Costs Pleadings

This was an optional question in section B of the paper and this question attracted up to 20 marks. Candidates were required to prepare the body of a letter to a client advising on the next steps in the Detailed Assessment Proceedings. In the scenario, the candidate's fictional client had been served with a bill of costs, three observations were provided in relation to the form and content of the bill. Candidates were also asked to pay particular regards to timescales within their advice and also highlight the potential consequences of not complying with those timescales.

Number of Candidates	14
Total Fails	1
Total Pass	13
% Pass	97
% Fail	7

Candidates should have discussed the commencement of assessment proceedings and the procedure for assessment including timescales and consequence of non-compliance. Candidates would have been credited for a discussion on the contents and format of a bill of costs and the right to recover costs, they are likely to have observed that in the scenario they were told that there are concerns with the certification and form of the bill of costs and they are likely to have explained the significance of these issues. Candidates may also have included some discussion on basis of assessment and the assessment hearing. To pass, candidates will have demonstrated a good depth of knowledge of the subject (i.e. a good understanding of the framework for assessment of costs) with good application and some analysis having regard to the facts, although candidates may have demonstrated some areas of weakness. This was one of the most popular optional questions on the paper with 100% of candidates choosing to answer this question. This question also had the best pass rate on section B and candidates had

obviously prepared very well for this question with the average mark being 65% (Merit). Marks ranged from 30% (Pass) to 80% (Higher Distinction).

Candidate Performance For Question 6 – Costs Pleadings

This was an optional question in section B of the paper and this question attracted up to 20 marks. Candidates were required to write the body of a letter of advice setting out the steps that should be taken in the case scenario, particularly whether an application should be made to amend the budget and how any such application should be made.

Number of Candidates	14
Total Fails	2
Total Pass	12
% Pass	86
% Fail	14

Again, this was one of the most popular optional question on the paper with 100% of candidates choosing to answer this question. This was not surprising since budgeting is an integral part of most costs professionals workload. Candidates needed to provide an explanation as to applicability of costs budgets, how to make an application to amend a budget and what is meant by a significant development. Candidates would have been credited for a discussion on good reason to depart and the difference between this test and significant developments. The pass rates were good with 86% reaching the required standard. The average mark on this question was a pass standard at 60% (Merit) and marks ranged from 30% (Fail) to 90% (Higher Distinction). This is another question that demonstrated to the assessors that, during preparation for the exam, candidates must spend time ensuring they can recall sufficient points of law to maximise the marks awarded to them. However, it is not sufficient to simply recall that knowledge, candidates must provide comprehensive responses showing how that authority applies to the scenario they are presented with.

Candidate Performance For Question 7 – Costs in Special Courts

This was an optional question in section B of the paper and this question attracted up to 20 marks. Candidates were required to prepare the body of an email setting out the rules in the lower tier tribunals in respect of costs and specifically when a Costs Order may be made. Candidates were told that the applicable procedural rules are the Health, Education and Social Care Chamber tribunal rules.

Number of Candidates	13
Total Fails	4
Total Pass	9
% Pass	69
% Fail	31

Candidates should have identified that because, in the scenario, this matter is a matter before a first tier tribunal Health, Education and Social Care Chamber, it is not one of the first tier tribunals that cannot make orders for costs. Candidates should have set out the framework of provisions in the Tribunals, Courts and Enforcement Act 2007 and the relevant rules specific to this tribunal - Tribunal Procedure (First-Tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008. Candidates were also likely to have explored wasted costs orders in some depth. 93% of candidates attempted this question. The pass rate was lower than for other questions at 69%. Marks ranged from 35% (Fail) to 75% (Distinction). The range of marks satisfied the examination team that the question

was fair. This was one of the last questions to appear on the paper and time management may have been an issue contributing to the lower pass rate.

Candidate Performance For Question 8 – Advanced Civil Procedure

This was an optional question in section B of the paper and this question attracted up to 20 marks. Candidates were required to write the body of a letter detailing how the costs of any injunction proceedings would ordinarily be dealt with and in what circumstances the Court may be persuaded to make an Order upon the indemnity basis.

Number of Candidates	1
Total Fails	1
Total Pass	0
% Pass	0
% Fail	100

This was the not a popular question, only one candidate attempted this question and did not reach the required standard. Additionally, this was one of the last questions to appear on the paper and time management may have been an issue contributing to the lower pass rate. To pass, candidates were expected to provide an explanation of the normal rule in costs and the three situations that need to be considered when offering advice on costs in relation to interim injunctions. Appropriate authority should have been used throughout although some points advanced may not be supported by authority. The examination team were satisfied that the question was fair and appropriate.

Candidate Performance For Question 9 – Advanced Civil Procedure

This was an optional question in section B of the paper and this question attracted up to 20 marks. Candidates were required to prepare the body of a memo setting out the rules on costs in contentious probate matters, with specific consideration of the general rule under the CPR.

Number of Candidates	0
Total Fails	0
Total Pass	0
% Pass	0
% Fail	0

No candidates attempted this question.

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Moderator

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