

## Examination Report

<b>Exam Session:</b>	December 2022
<b>Exam Paper:</b>	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 2022 Unit 3 examination.

This report is intended to be a useful document that comments on overall performance by candidates in the December 2022 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 fourth 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.

Unlike last year not 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. There will be students that only studied law/litigation with ACLT.

Overall, the performance of candidates on this paper showed encouraging signs given the educational background highlighted above. The strong performance was an indicator that the students 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. Where low marks were awarded it was likely to be a time management issue rather than lack of knowledge. 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 slight 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.

It is also worthy of note that the exam was interrupted by a fire alarm which meant the students had to be vacated for a period of 40 minutes. This interruption was in London only and therefore only impacted the London students. As part of the moderation and marking this interruption was taken into account, both overall and where any individual concerns were raised in order to ensure fairness and consistency. As a result I am content that the marks awarded after moderation are correct. There appeared to be no difference in performance between the students based in Manchester or London.

There was a total of 24 candidates that sat this paper. On the whole, the paper was completed well with 92% 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 38% 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.

<b>Number of Candidates</b>	24
<b>Total Fails</b>	2
<b>Total Pass</b>	22
<b>% Pass</b>	92
<b>% Fail</b>	8
<b>Classification of Marks Achieved</b>	
<b>% Total in Pass Band</b>	29
<b>% Total in Merit Band</b>	13
<b>% Total in Distinction Band</b>	50

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. All questions had students who had failed them with the lowest number of fails at 3 for the individual questions. Questions 2 and 4 saw a pass rate of 79% and questions 1 and 3 saw a pass rate of 88%. Only a few of the questions required adjustment after moderation. Such changes were on borderline pass papers. Only question 1 had recommended changes to reflect the true extent of knowledge provided. Candidates performed best in the section A questions 2 and 4 where 88% of all candidates passed. In addition, whilst the pass marks dipped on the other section A questions, all questions in this section saw between 4% and 33% of candidates being awarded the maximum number of marks that were available. This is a clear indicator that the questions were fair and reasonable. The students performed best on Question 1.

For the remaining three questions on the paper, in section B, candidates were required to select these from four optional questions. 91% of candidates chose to answer questions 5 and 6. This is a common trend in examination sittings. 88% of candidates chose to answer question 7 as their third option with 13% of candidates opting to answer question 8 and 4% of students answering question 9. This assisted with both marking and moderation in terms of ensuring consistency in marks awarded in section B. Question 8 was where candidates performed best on section B in terms of pass rates. Question 5 had a strong pass rate at 86%.

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

#### **Candidate Performance For Question 1 – Lien**

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 nature of a lien and how such a lien operates.

<b>Number of Candidates</b>	24
<b>Total Fails</b>	5
<b>Total Pass</b>	19
<b>% Pass</b>	79
<b>% Fail</b>	21

Candidates were expected to provide an explanation of what a lien was and how it was operated by a solicitor with respect to unpaid fees. Performance on this question was pleasing with a 79% pass rate. However, marks ranged from 40% (fail) to 100% (High

Distinction). The average mark awarded for this question was 80% (High Distinction). It is clear from the results that the majority of candidates had prepared well for this question which is particularly pleasing. Candidates performed best in this question in section A of the paper. 33% of candidates were awarded the maximum number of marks that were available for the question.

**Candidate Performance For Question 2 – Retainer**

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.

<b>Number of Candidates</b>	24
<b>Total Fails</b>	3
<b>Total Pass</b>	21
<b>% Pass</b>	82
<b>% Fail</b>	18

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 82% of candidates achieving a pass. Marks ranged from 50% to 100% with the average mark being 70% (Distinction). 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 liability for costs of a third party funder in England and Wales and discuss whether there may be a need for better oversight of these type of funding arrangements.

<b>Number of Candidates</b>	24
<b>Total Fails</b>	5
<b>Total Pass</b>	19
<b>% Pass</b>	79
<b>% Fail</b>	21

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 79% pass rate. Marks ranged from 30% (Fail) to 100% (High Distinction). The average mark was 70% (Distinction).

**Candidate Performance For Question 4 – CFA**

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.

<b>Number of Candidates</b>	24
<b>Total Fails</b>	3
<b>Total Pass</b>	21
<b>% Pass</b>	88
<b>% Fail</b>	12

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 consistent with other questions in Section A. Marks ranged from 15% (Fail) to 100% (High Distinction) with the average mark being 70% (Distinction).

#### **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.

<b>Number of Candidates</b>	22
<b>Total Fails</b>	3
<b>Total Pass</b>	19
<b>% Pass</b>	86
<b>% Fail</b>	14

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 92% 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 80% (High Distinction). Marks ranged from 45% (Fail) to 90% (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 the hurdles which must be

overcome to achieve departure from the costs management order in respect to all phases of the budget.

<b>Number of Candidates</b>	23
<b>Total Fails</b>	6
<b>Total Pass</b>	17
<b>% Pass</b>	74
<b>% Fail</b>	26

Again, this was one of the most popular optional questions on the paper with 96% 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 with respect to the costs management order. 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 74% reaching the required standard. The average mark on this question was a pass standard at 61% (Merit) and marks ranged from 35% (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.

<b>Number of Candidates</b>	20
<b>Total Fails</b>	4
<b>Total Pass</b>	16
<b>% Pass</b>	80
<b>% Fail</b>	20

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. 83% of candidates attempted this question. Marks ranged from 5% (Fail) to 90% (Higher 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 would be dealt with in three family cases.

<b>Number of Candidates</b>	3
<b>Total Fails</b>	0
<b>Total Pass</b>	3
<b>% Pass</b>	100
<b>% Fail</b>	0

This was not a popular question, only three candidates attempted this question. 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 average marks. To get better marks, candidates were expected to provide an explanation of how the costs would be dealt with for all three family cases. 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.

<b>Number of Candidates</b>	2
<b>Total Fails</b>	1
<b>Total Pass</b>	1
<b>% Pass</b>	50
<b>% Fail</b>	50

Two students attempted this question. There was a 50% pass rate. As a result this question seemed reasonable and fair. As it was at the end of the paper it was likely that students were able to answer earlier questions.

**Mark Armstrong**  
**Moderator**