December 2022: Marker Guidance: Unit 3

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

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

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

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

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

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

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

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

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

SECTION A (all compulsory – 40%)

Question 1:	Describe the nature of a lien and explain how a solicitor with unpaid fees may have a lien over a client's property.
Total Marks Attainable Fail = 0-4.9 Pass = 5+ Merit = 6+ Distinction = 7+	10
Indicative Content	**Marks**
Required: Candidates must explain what a lien is and the distinction between the types of lien, e.g: ***A lien is:*** A right to keep possession of property belonging to another person until a debt owed by that person is discharged. ***A solicitor with unpaid fees has a potential lien over the client's property in one of three ways:*** Common law lien, an equitable lien or a statutory lien under section 73 of the Solicitors Act 1974. ***Common law lien:*** Retaining – this is the right to hold property already in possession. it is a lien that can only exist where the party claiming the lien has property in their hands over which they can assert a claim, and in respect of which they have a right to keep. ***Equitable lien:*** Preserving – the equitable lien arises in cases where funds do not pass into the solicitor's hands and so the solicitor does not have the basic 'possession' required in order for a common law lien to arise. The court has an equitable jurisdiction to intervene to protect the solicitor's interests and to order that a payment is made to the solicitor direct. ***Section 73 of the Solicitors Act 1974:*** Solicitors have the right to apply to the court for a charge on any property recovered or preserved through their efforts.	Up to 5 marks
Candidates may explain in more detail what a retaining lien is and demonstrate knowledge of how it operates, e.g: ***A retaining (common law) lien:*** Is passive and possessory, there is no right to actively enforce the demand just a right to withhold possession. ***Credit should be given where reference is made to authority on the nature of retaining liens, e.g:*** Bozon v Bolland [1839] and Barrett v Gough Thomas [1951]	Up to 5 marks To achieve more than a pass, candidates must not simply cite law but should show a

Property: An example of the property they may have in their possession is the file of papers, solicitors are entitled to hold the papers until his fees are paid. This lien only extends to the client's own property, any paper belonging to a third party cannot be subject to such a lien. The property over which such a client is exercised must have come into the solicitor's possession through employment and the work done on behalf of the client. The property over which such a client can be exercised may include money held on client account unless the money held is held for a specific purpose. Electronic data is not tangible property so no lien arises in respect of the same. ***Credit should be given where reference is made to authority on retaining liens and the type of property, e.g:*** Sheffield v Eden [1878], Leo Abse and Cohen v Evan G Jones Builders Limited [1984], Loescher v Dean [1950], Withers v Rybeck [2011] and Withers v Langbar [2011] and Your Response v Datateam Business Media [2014].	greater depth to their knowledge base and apply the authority to the question posed
Candidates may explain in more detail what a preserving lien is and demonstrate knowledge of how it operates, e.g: ***A preserving (or equitable) lien is:*** A right to ask the court to order that personal property recovered under a judgment obtained with the solicitor's assistance stand as security for his costs. ***Honest and fair dealing:*** An equitable or preserving lien exists because there should be honest and fair dealing, it is more in the nature of equitable relief to prevent the Solicitor from being deprived of his costs, rather than a lien. Authority sets out that a lien may exist to prevent defendants dealing directly with their lay opponents resulting in the opponent solicitors not being paid. ***Notice:*** If a paying party has notice of solicitor's interest and pays lay opponent direct may have to pay again. A party with notice of the solicitor's preserving lien is not under an obligation, following a settlement as to costs, to pay any settlement monies directly to the solicitor. However, he might be liable to the solicitor if both of the following apply he had knowledge of the existence of the lien and there is evidence of collusion with the solicitor's client to defeat the lien. ***Credit should be given where reference is made to authority on honest and fair dealings and notice of unpaid fees, e.g:*** Welsh v Hole [1779], Read v Dupper [1765], James Bibby Ltd v Woods and Howard [1949], and Khans Solicitors v Chifuntwe and SSHD [2012] ***Security or charge:*** The equitable lien operates by way of security or charge. A preserving lien can only be asserted in respect of the costs debt that relates to the property recovered. It does not attach to all forms of property but may offer wider protection than a retaining lien, in that it covers property not in the solicitor's possession and provides him	Up to 4 marks To achieve more than a pass, candidates must not simply cite law but should show a greater depth to their knowledge base and apply the authority to the question posed

with an equitable right to have the property transferred into his possession and to apply to the court for a charge. ***Credit should be given where reference is made to authority on security or charge, e.g:*** Barker v St Quinton [1844] and Euro Commercial Leasing v Cartwright & Lewis [1995]. ***To apply:*** A solicitor must have been instructed, there must be fees owed as a result of the instruction, the property over which they are claiming the lien must have been recovered or preserved and that must have been as a result of the proceedings. ***Proceedings:*** Historically it was thought there must be proceedings in order to have the right to a preserving lien, however, there does not need to be proceedings. For example, if the matter settled through ADR the solicitor would still have the right to make an application to the court. The rationale for this is that modern day litigation, and the existence of the protocols, encourages parties to settle before the need to litigate. However, very recently it has been decided that where a firm helps a client write a letter of claim or complete an online form and the claim is paid directly to the client in response then the firm is not entitled to an interest in the compensation that equity would protect. This final point is currently being appealed. ***Credit should be given where reference is made to authority on an application and the issue of proceedings, e.g:*** Halvanon Insurance Co Ltd v Central Reinsurance [1988], Gavin Edmonson Solicitors Ltd v Haven Insurance Co Ltd [2018] and Bott and Co v Ryanair [2019].	
Candidates should explain what a statutory lien is and demonstrate knowledge of how it operates, e.g: ***Section 73 of the Solicitor Act 1974:*** This section replaces various earlier statutory provisions to the same effect going back least as far as the Attorneys and Solicitors Act 1860. It adds to the two common law remedies by giving a solicitor a right to apply for a charging order. The courts have stressed that the effect of the section is not to create any new right, but rather to give statutory aid to the existing common law liens. In other words, enabling them more cheaply and speedily to enforce a right they already possess. However, the section is expansive in at least one respect: it extends to a charge over real property, which the common law rights do not. ***To apply:*** Solicitor can apply to the court for a lien over property, the provisions are similar to that in Halvanon. The court may declare the solicitor is entitled to a charge on any property recovered or preserved through his instrumentality for his assessed costs in relation to that suit, matter or proceeding. A solicitor must also be able to make out a prima facie case that they will not be paid unless an order is made. The Court may also make such orders for the assessment of those costs and for raising money to pay or for paying them out of the property recovered	Up to 3 marks To achieve more than a pass, candidates must not simply cite law but should show a greater depth to their knowledge base and apply the authority to the question posed

or preserved as the court thinks fit. Costs belong to the client so any application under section 73 must be prompt. ***No absolute right:*** Section 73 does not confer an absolute right to a charging order. The court has a discretion and, like the equitable lien, it may be waived where a solicitor takes alternative security for his costs without expressly preserving those rights. ***Credit should be given where reference is made to authority on the statutory lien, e.g:*** Shaw v Neale (1858), Harrison v Harrison [1883], Re Born [1900], Re John Morris [1908] and Kahn Solicitors v Secretary of state [2013].	

Question 2:	Explain when a retainer between a solicitor and client may be terminated and the potential cost implications of wrongful termination.
Total Marks Attainable Fail = 0-4.9 Pass = 5+ Merit = 6+ Distinction = 7+	10
Indicative Content	**Marks**
Required: A description of a retainer and principle of an entire contract, e.g: ***A retainer:*** Is the business agreement between solicitor and client, it serves as the right to payment & is fundamental to the recovery of costs. Where there is no retainer there is no entitlement to charge. ***Entire contract:*** The law must imply that the contract of the solicitor upon a retainer in the action is an entire contract to conduct the action till the end. ***Credit reference to any appropriate authority on retainers and entire contracts, e.g:*** J H Milner & Son v Percy Bilton Ltd [1966] and Underwood, Son v Piper Lewis [1894].	Up to 2 marks
Candidate should refer to when a solicitor may terminate a retainer, e.g: ***Good reason and reasonable notice:*** There is an implied term in a retainer that where a solicitor ceases to act for a client they must have good reason and provide reasonable notice. ***Good reason:*** Client's failure to make a payment on account of costs may amount to good reason. Although the amount sought must be reasonable otherwise it will be deemed to be wrongful termination. It is not reasonable that a solicitor should engage to act for an indefinite	Up to 5 marks To achieve more than a pass candidates must not simply cite the examples but

number of years, winding up estates, without receiving any payment on which he can maintain himself. A conflict of interest or professional embarrassment may amount to good reason. There may also be good reason if the clients instructions require the lawyer to act improperly. If the Solicitor is not confident the client is giving instructions freely they can cease to act. ***Credit reference to any appropriate authority on good reason, e.g:*** Indicative Behaviour 1.26 of the SRA Handbook (now superseded), Solicitors Act 1974 Section 65 (1)&(2), Wong v Vizards (a firm) [1997], Warmingtons v McMurray [1936], Hilton v Barker Booth & Eastwood [2005], Para 6.1 of the SRA Code of Conduct for Solicitors, RELs and RFLs, Re Jones [1896], Section 1 of the Legal Services Act 07 and Richard Buxton (Solicitors) v Huw Llewelyn Paul Mills-Owens & Law Society (intervener) (Second Appeal)[2010]. ***Reasonable notice:*** Will be case sensitive but should be judged objectively. ***Credit reference to any appropriate authority on reasonable notice, e.g:*** Gill v Heer Manak Solicitors [2018].	should show a holistic understanding of how the law operates in relation to the termination of a retainer.
Candidate should also raise some of the following points on the implications of wrongful termination by a solicitor: ***No entitlement to payment:*** If a solicitor wrongfully terminates the retainer he is not entitled to be paid. Where a solicitor terminates a retainer unreasonably he may not be entitled to payment even on a quantum meruit basis. Where reasonable notice has not been given there will be no entitlement to payment. Reasonable notice will be case sensitive. Where there is wrongful termination and no entitlement to payment it follows there will be no entitlement to costs. ***Credit reference to any appropriate authority on payment or consequence of wrongful termination, e.g:*** Re Romer & Haslam [1893], Wild v Simpson [1919], Gill v Heer Manak Solicitors [2018], Murray & Anor v Richard Slade and Company Ltd [2021].	Up to 3 marks To achieve a distinction candidates must show that they understand the link between payment and termination with good cause and reasonable notice
Candidate may further refer to the form and content of a retainer e.g: ***A retainer is:*** A contract for legal service between a lawyer and client and there is an implied term that the service will be carried out with satisfactory care and skill. Can be in writing, made orally, or implied by conduct. Leaving files at a solicitor's office may be sufficient to establish a retainer. Some agreements must follow specific formalities, such as a CFA which needs to be in writing or a contentious business agreement. ***Credit reference to any appropriate authority on payment or consequence of wrongful termination, e.g:*** Groom v Crocker [1939], Parrott v Etchells [1839], section 13 of the Supply of Goods and Services	Up to 2 marks To pass a response must demonstrate an understanding of the nature and form of a retainer.

Act 1982, section 58(3) of the Courts and Legal Services Act 1990 and section 59 of the Solicitors Act 1974.	

Question 3:	Describe what third party funding is and explain to what extent a third party funder may be liable for the costs of proceedings.
Total Marks Attainable Fail = 0-4.9 Pass = 5+ Merit = 6+ Distinction = 7+	10
Indicative Content	**Marks**
Candidates must explain what third party funding is, e.g: **Third party funding:** Is an alternative method of litigation funding where a commercial funder with no connection to the proceedings will pay some or all of the costs of the case in return for a share of any sum of money awarded in damages if the case is won. ***Definitions:*** Champerty 'occurs when the person maintaining another stipulates for a share of the proceeds of the action or suit'. Maintenance is said to be the procurement, by direct or indirect financial assistance, of another person to institute, or carry on or defend the civil proceedings without lawful justification. ***Credit reference to any appropriate authority on defining champerty and maintenance, e.g:*** British Cash & Parcel Conveyors v Lamson. Store Service Co [1908] and Chitty 28 Ed Vol 1 17 – 054.	Up to 2 mark A pass must include the demonstration that the candidate understands what Third Party Funding is.
Credit a discussion on non party costs orders (and the change in stance to such funding arrangements) e.g: ***Jurisdiction:*** The Court has jurisdiction to award the costs of litigation to a non-party. Although historically the Court has been cautious in granting such an order there has more recently been a shift in stance. The was thought to be a cap on the liability of third party funders but this is not a principle that Courts are bound by and third party funders may be liable to the full extent of costs. Funders may be liable to full extent from date started funding. Whilst generally speaking the discretion to order a non-party to pay costs would not be exercised against pure funders the courts may make a non party costs order where a funder had gone beyond mere funding, ***Credit reference to any appropriate authority on the making of third party costs orders against a third party funder, e.g:*** Section 51(1) of the Senior Courts Act 1981, CPR 46.2, Merchant bridge & Co Ltd & Another v Safron General Partner Ltd [2011], Arkin v Borchard Lines Ltd & Ors [2005], Davey v Money and Others [2019], Chapel Gate Credit Opportunity	Up to 8 marks

Master Fund Ltd v Money & Ors [2020] and Laser Trust v CFL Finance Ltd [2021]. ***Control and free decision making:*** Historically such funding arrangements have been unlawful because of the influence that a funder may have on the decisions of the litigator. Today, agreements tend to be structured so that the client retains full control over the way in which they conduct their action. However, even though third party funders are, in theory, unable to control proceedings, there is a concern that they may influence some of the decisions because they are ultimately funding all or part of the claim. Some funding agreements may mean the funder has high levels of control over the proceedings. The distinction between types of arrangements and 'pure funders' will be considered by the Court. Ultimately, the third party funder may be liable for costs on indemnity basis. ***Credit reference to any appropriate authority on the level of control and type of orders that may be made against a third party funder, e.g:*** Excalibur Ventures LLC v Texas Keystone Inc & Ors (Rev 2) [2014], Laser Trust v CFL Finance Ltd [2021] and Laser Trust v CFL Finance Ltd [2021].	
Credit a discussion on chronological developments (and the change in stance to such funding arrangements) e.g: ***Developments:*** Third Party funding was permitted in limited circumstances, for example matters arising out of insolvencies. Then came the availability of government funding for litigation which suggested a shift in attitude towards the use of funding from outside parties for litigation. In 1967 the legislative abolished the criminal offences and torts of champerty and maintenance. However, agreements may still be unenforceable on the grounds of public policy. Then, contingency fee agreements in the form of Conditional Fee Agreements were expressly permitted by statute. These agreements would have historically been deemed champertous. Today, given the current climate and changing attitudes to litigation funding, third party funding agreements are being held not offend public policy. They are also being used in wider types of litigation such as family (despite CFAs being prohibited in family). ***Credit reference to any appropriate authority on defining champerty, maintenance and the use of third party funding, e.g:*** Seear v Lawson (1880), the Legal Aid and Advice Act 1949, section 13 of the Criminal Law Act 1967, section 14 of the Criminal Law Act 1967, section 58 of the Courts and Legal Services Act 1990, section 45 of the Legal Aid Sentencing and Punishment of Offenders Act 2012, JEB Recoveries LLP v Linstock [2015] and Akhmedova v Akhmedov & Ors [2020].	Up to 2 marks To achieve more than a pass, candidates must not simply cite law but should show a greater depth to their knowledge base.
Credit a discussion on whether there should be better oversight, e.g: ***Restrictions:*** Agreements based on champerty and maintenance still remain. Courts still have to decide on the facts of each litigation funding	Up to 2 marks To achieve a distinction,

agreement whether the contract is unenforceable on the grounds of public policy. This may restrict access to justice. There has been a change in approach by both the legislative and judiciary but there has been no legislation around this type of funding meaning it only tends to get used in a commercial context. ***Association of Litigation Funders:*** Third party funding in England and Wales is self-regulated by the Association of Litigation Funders (ALF). The ALF is a private company limited by guarantee, owned and directed by its member firms. A voluntary code of conduct for litigation funders was first published in November 2011. It was developed by a Ministry of Justice working group on third party funding, which was set up in response to a recommendation by leading judge Lord Justice Jackson in his comprehensive review of civil litigation costs. ALF members which fail to meet the requirements of the code may be subject to a fine and/or termination of their membership. ***2017 Government has no plans to regulate:*** The UK government had no plans to formally regulate third party providers of litigation funding, as there are no "specific concerns" about the current voluntary framework.	candidates will provide some commentary on the regulation and better oversight.

Question 4:	Identify the legislative provisions that govern the form and content of a Conditional Fee Agreement and explain how and why those rules have changed since Conditional Fee Agreements were introduced.
Total Marks Attainable Fail = 0-7.4 Pass = 7.5+ Merit = 9+ Distinction = 10.5+	10
Indicative Content	**Marks**
Candidates must explain what a conditional fee agreement is, e.g: ***Conditional Fee Agreements:*** Introduced by the Courts and Legal Services Act 1990. They are contingency agreements or 'no win no fee agreements' for advocacy and litigation services. Providing they satisfy all of the conditions applicable to it by virtue of the legislation shall not be unenforceable by reason only of its being a conditional fee agreement but any other conditional fee agreement shall be unenforceable. ***Credit reference to any applicable authority explaining what a CFA is, e.g:*** Section 58(1) of the Courts and Legal Services Act 1990 and section 58(2) of the Courts and Legal Services Act 1990.	Up to 2 mark A pass must include the demonstration that the candidate understands what a CFA is.

Credit a discussion on the form and operation of a conditional fee agreement, e.g: ***Form of CFAs:*** Must comply with formalities, e.g they must be in writing. If a CFA includes the provision for a success fee they must be stated and must not exceed the amount set by the Lord Chancellor. CFAs cannot relate to prohibited proceedings, which includes family and criminal proceedings. CFAs must comply with regulations made by the Lord Chancellor and even a technical breach may render an agreement unenforceable. ***Credit reference to any applicable authority explaining the form and content of a CFA, e.g:*** Section 58(3)(a) of the Courts and Legal Services Act 1990, Section 58(3)(b) of the Courts and Legal Services Act 1990, Section 58(3)(c) of the Courts and Legal Services Act 1990, Section 58A of the Courts and Legal Services Act 1990, section 58(4) of the Courts and Legal Services Act 1990 and Wood v Chaleff [2002].	Up to 4 marks To achieve more than a pass, candidates must not simply cite law but should show a greater depth to their knowledge base.
Credit a discussion on the changes to recoverability of additional liabilities, e.g: ***Success Fees and ATE:*** When introduced success fees and ATE premiums were not recoverable between the parties. Subsequent legislation amended the Courts and Legal Services Act 1990 and allowed for the recoverability and the uptake of these funding arrangements increased. However, that position was reversed by legislation in 2013 and they are no longer recoverable. If the CFA is dated after 1 April 2013 then the success fee will not be recoverable from the losing party unless it relates to a matter that falls under the following exceptions publication and privacy proceedings and mesothelioma cases. If the CFA is pre-1 April 2013 then the success fee can be recovered from the client if the 'win' under the terms of the CFA is triggered. ***Credit reference to any applicable authority on success fees and ATE, e.g:*** section 27 of the Access to Justice Act 1999, section 29 of the Access to Justice Act 1999, section 44 of the Legal Aid, Sentencing & Punishment of Offenders Act 2012, section 46 of the Legal Aid, Sentencing & Punishment of Offenders Act 2012 and CPR 48.2(1)(a).	Up to 4 marks
Credit reference to a discussion on how the law changed in relation to the transfer of CFAs, e.g: ***Assignment, novation and transferring:*** There are a number of situations when a CFA may need to be transferred. A firm may go into administration, close or close a department. A solicitor may move firms and client wants to retain the same agreement. A firm may be bought by another firm or merges. A firm may change its name. There was a degree of uncertainty as to whether a CFA may be transferred. The latest authority sets out that it is possible to transfer a CFA. Even in cases where the judiciary may be divided on whether a novation or assignment has taken place it may still be possible for the first solicitor to be paid and	Up to 2 marks

additional liabilities to be recovered. This is because it has been held that the intention of parliament, when they legislated and LASPO was passed, would not have been that the first solicitor could not be paid or that the additional liabilities would not be recovered where a CFA was transferred. It will be a question of evidence and each individual case must be considered based on the individual circumstances surrounding the purported transfer. Where there has been a termination the first solicitor will not be entitled to payment and the pre LASPO benefits, i.e recoverability of additional liabilities, will not be transferable. ***Credit reference to any applicable authority on assignment, novation and transferring, e.g:*** Jones v Spire Healthcare 2015, Budana v Leeds Teaching Hospitals [2016], Webb v Bromley [2016], Jones v Spire Healthcare [2016], Budana v Leeds Teaching Hospitals NHS Trust [2017] and Roman v Axa Insurance [2019].	
Credit reference to any other circumstances that may impact the enforceability of a CFA, e.g: ***Retrospectivity:*** CFAs can be retrospective but not backdated. This principle also applies to success fees although where proceedings have been issued, a success fee will not be recoverable for the period until Notice of Funding has been given. The distinction between retrospectivity and an agreement being backdated is key, i.e it must contain a clause that details the agreement will have retrospective effect and should not just be dated with the date of entry but state that it relates to an earlier date. ***Credit reference to any applicable authority on retrospectivity, e.g:*** King v Telegraph Group Ltd [2005], Holmes v Alfred McAlpine Homes (Yorkshire) Ltd (2006), Forde v Birmingham City Council [2008] and JN Dairies Ltd v Johal Dairies Ltd & Anor [2011].	Up to 2 marks To achieve a distinction, candidates will provide some commentary on other issues concerning enforceability.

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

Question 5:	You are instructed by Mr Simon Levison, a Solicitor that works at a small SRA regulated firm. Mr Levison acted on behalf of the defendant, Mr Marcus Thompson, in a breach of contract claim brought by Mr Robert Banks. On 19 March 2019 the claimant issued proceedings against the defendant for an alleged breach of contract arising from a purchase agreement entered into between the parties on or around 10 November 2017 for the purchase of a 2005 Maserati Birdcage 75th Pininfarina Concept. The car had been delivered without its original engine. The claimant sought an order that the defendant secure delivery up of the engine.

	The proceedings were defended. The trial took place between 7 and 13 May 2021 before HHJ Samuels, who gave judgment for the claimant. The defendant was ordered to pay the claimant's costs to 5 October 2020 on the standard basis and from 5 October 2020 onwards on the indemnity basis, to be assessed if not agreed. On 29 December 2021 Clear Water Costs, the claimant's costs representatives, sent a Notice of Commencement and a Bill of Costs totalling £810,143.61, by email to Mr Levison. Both the covering letter and the Notice of Commencement identified the date for service of points of dispute as 26 January 2022. Mr Levison emailed you on the 2 February 2022, he has asked for you to progress matters by drafting the points of dispute. He has also asked that you write a letter to his client providing advice on next steps in the Detailed Assessment Proceedings. He has been chasing his client for instructions for the past three weeks and his client has delayed in providing instructions so he has asked that you include timescales within your advice and also highlight the potential consequences of not complying with those timescales. He confirmed that he has an extension until the 20 February 2022 to file points of dispute. Prepare the body of a letter to ~~Mr Robert Banks~~ Mr Levison advising on the next steps in the Detailed Assessment Proceedings.
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: commencement of assessment proceedings, basis of assessment, next procedural steps and the assessment process. Candidates will demonstrate 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 candidate 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 framework for assessment) with very good application and some analysis having regard to the facts. Candidates are likely to observe that IN THIS SCENARIO we are told that there has been an extension for the date of service of the points of dispute and that the bill should be split based on the costs order made. 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. Candidates are likely to observe that in this scenario there may be discussion as to what precisely constitutes the costs 'of the proceedings'. Candidates will provide an excellent advice setting out the procedural steps and application of key concepts as part of the process (e.g. proportionality). 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.

Note to Markers: The paper had a typographical error in (see above).

Indicative Content	**Marks**
Required: a discussion on the commencement of assessment proceedings, e.g: ***Detailed/Provisional Assessment:*** Takes place at conclusion of proceedings. Detailed assessment proceedings are commenced by the receiving party serving on the paying party notice of commencement in the relevant practice form; and a copy of the bill of costs. The receiving party must also serve a copy of the notice of commencement and the bill on any other relevant persons specified in CPR Practice Direction 47. The period for commencing detailed assessment proceedings is within 3 months of the event that gives rise to entitlement. ***Credit reference to the citation of any authority cited on commencement of assessment proceedings, e.g:*** CPR 44.6, CPR 47.1, CPR 47.6 (1), CPR 47.6 (2) and CPR 47.7.	Up to 2 Marks
Credit a discussion on an order for costs, e.g: ***Order:*** The court has discretion as to whether costs are payable by one party to another, the amount of those costs and when they are to be paid. If the court decides to make an order about costs then the general rule is that the unsuccessful party will be ordered to pay the costs of the successful party. However, the court may make a different order. ***Credit reference to the citation of any authority on making of an order for costs, e.g:*** CPR 44.2(1)(a), CPR 44.2(1)(b), CPR 44.2(1)(c), CPR 44.2(2)(a), CPR 44.2(2)(b), ***Basis of assessment:*** The CPR sets out the basis of assessment, standard or indemnity basis, but the court will not in either case allow costs which have been unreasonably incurred or are unreasonable in amount. Where the amount of costs is to be assessed on the standard basis, the court will only allow costs which are proportionate to the matters in issue. Costs which are disproportionate in amount may be disallowed or reduced even if they were reasonably or necessarily incurred and resolve any doubt which it may have as to whether costs were reasonably and proportionately incurred or were reasonable and proportionate in amount in favour of the paying party. Where the amount of costs is to be assessed on the indemnity basis,	Up to 3 Marks

the court will resolve any doubt which it may have as to whether costs were reasonably incurred or were reasonable in amount in favour of the receiving party. ***Credit reference to the citation of any authority on the basis of assessment, e.g:*** CPR 44.3(1), CPR 44.3(2) and CPR 44.3(3).	
Credit a discussion regarding the bill of costs and the right to recover costs e.g: ***The electronic bill:*** In October and November 2017 CPR 47 and the Part 47 Practice Direction were amended to provide that in all CPR Part 7 multitrack claims (except where the proceedings are subject to fixed costs or scale costs, the receiving party is a litigant in person or the court has otherwise ordered) bills of costs for costs recoverable between the parties must, for all work undertaken after 6 April 2018, be presented in electronic spreadsheet format, capable of producing essential summaries and performing essential functions compatible with Precedent S, annexed to the Part 47 Practice Direction. ***Essential Information:*** A bill should start with the full title of the proceedings, the name of the party whose bill it is and a description of the order for costs or other document giving the right to detailed assessment. The title page should include prescribed information as to VAT. The bill should then give some background information about the case. Then the bill should incorporate a statement of the status of the fee earners in respect of whom profit costs are claimed, the rates claimed for each such person and a brief explanation of any agreement or arrangement between the receiving party and his legal representatives which affects the costs claimed in the bill. It is then convenient to divide the paper into several columns headed as follows: item number, date and description of work done, VAT, disbursements, profit costs. Sometimes it is necessary or convenient to divide the bill containing the actual items of costs into separate parts, numbered consecutively. In each part of a bill all the items claimed must be consecutively numbered and must be divided under such of the heads of costs as may be appropriate. The final part of the bill of costs should contain such of the prescribed certificates as are appropriate to the case and then the signature of the receiving party or his legal representative. **Credit reference to the citation of any authority cited on the form and content of a bill of costs, e.g:** CPR 47 PD para 13.3, CPR 47 PD para 5.7, CPR 47 PD para 5.8, CPR 47 PD para 5.9, CPR 47 PD para 5.10, CPR 47 PD para 5.11, CPR 47 PD para 5.12-22 ***The indemnity principle and retainer:*** The indemnity principle simply provides that the receiving party cannot recover more costs from the paying party than he himself would be liable to pay his own solicitors. The retainer is fundamental to the right to recover costs. Where there is no retainer there is no entitlement to charge, there is no business relationship. A retainer must be enforceable in order to charge the client and recover costs inter partes.	Up to 6 Marks To achieve more than a pass, candidates must not simply cite law but should show a greater depth to their knowledge base and apply the authority to the question posed

The indemnity principle does not apply in certain circumstances e.g. legal aid. This does not appear to be a situation where the indemnity principle will not apply. Signature on the bill is sufficient to show that the indemnity principle has not been breached. However, if a genuine issue is raised by the paying party then the court is likely to consider this. A bill of costs is not properly certified if the signatory's name is not identifiable. ***Credit reference to the citation of any authority cited on the retainers and the indemnity principle, e.g:*** JH Milner v Percy Bilton [1966], Scott v Hull and East Yorkshire Hospitals NHS Trust [2014], Bailey v IBC [1998] and Barking, Havering and Redbridge University Hospitals NHS Trust v AKC [2021].	
Discussion on next procedural steps e.g: ***Points of dispute:*** The paying party and any other party to the detailed assessment proceedings may dispute any item in the bill of costs by serving points of dispute. The period for serving points of dispute is 21 days after the date of service of the notice of commencement. Only items specified in the points of dispute may be raised at the hearing, unless the court gives permission. The RP may file a request for a DCC if the 21 days (or relevant period) has expired and the RP has not been served with any POD. ***Credit reference to any authority cited on points of dispute, e.g:*** CPR 47.9 (1), CPR 47.9 (2), CPR 47.14 (6), CPR 47.9 (4), Edinburgh v Fieldfisher LLP [2020] and Ainsworth v Stewarts Law LLP [2020]. ***Default Costs Certificates:*** The RP may file a request for a DCC if the 21 days (or relevant period) has expired and the RP has not been served with any POD. Application for requesting a DCC is on Form N254. Will include an order to pay costs to which the DCC relates. Sum payable is set out in PD (£80 fixed costs plus court fee). ***Credit reference to any authority cited on default costs certificates, e.g:*** CPR 47.9 (4), CPR 47.11(1), CPR 47.11(2), CPR 47.11(3), CPR PD 47 para 10.7, Masten v London Britannia Hotel Ltd [2020], National Bank of Kazakhstan & Another v The Bank of New York Mellon & Ors [2021], Gregor Fisken Ltd v Carl [2021], Serbian Orthodox Church – Serbian Patriarchy v Kesar & Co [2021] ***Replies:*** Where any party to the detailed assessment proceedings serves POD, the RP may serve a reply on the other parties to the assessment proceedings. RP may do so within 21 days after being served with the POD to which the reply relates. Replies must be limited to points of principle and concessions only, must not contain general denials, specific denials or standard form responses. When practicable replies must be set in the form of Precedent G. ***Credit reference to any authority cited on replies, e.g:*** CPR 47.13 (1), CPR 47.13(2), CPR PD 44, 12.1 and CPR PD 47, 12.2.	Up to 8 Marks To achieve more than a pass, candidates must not simply cite law but should show a greater depth to their knowledge base and apply the authority to the question posed

Request for a Hearing: RP must file request for DA Hearing within 3 months of expiry of period for commencing DA proceedings. N258 needs to be filed plus NOC, Bill, Order/Judgment/Doc giving right to DA, Precedent G PODS and Replies, Any other orders, Fee notes and written evidence of disbursements (over £500). Statement signed by legal representative and estimate of the length of time the DA hearing will take. Court fee will also need to be paid. ***Credit reference to any authority cited on requesting a hearing, e.g:*** CPR 47.14, CPR PD 47 para 13.1, CPR PD 47 para 13.2 and CPR PD 47 para 5.2	
Discussion on the assessment e.g: ***Basis of Assessment and reasonableness:*** Court has discretion as to costs BUT emphasis on proportionality because of the standard basis of assessment (CPR 44.3(2) and the overriding objective). Where the amount of costs is to be assessed on the standard basis, the court will only allow costs which are proportionate to the matters in issue. Costs which are disproportionate in amount may be disallowed or reduced even if they were reasonably or necessarily incurred; and resolve any doubt which it may have as to whether costs were reasonably and proportionately incurred or were reasonable and proportionate in amount in favour of the paying party. Where the amount of costs is to be assessed on the indemnity basis, the court will resolve any doubt which it may have as to whether costs were reasonably incurred or were reasonable in amount in favour of the receiving party. Whatever basis: Reasonableness would always be considered. ***Credit reference to any authority cited on basis of assessment and reasonableness, e.g:*** Section 51 of the Senior Courts Act 1981, CPR 44.2, CPR 44.3(2) and CPR 44.3(3) ***Application of Proportionality:*** There has been uncertainty as to how the new test or proportionality should apply. However the Court of Appeal has now provided a degree of certainty. It Is a two stage test and once reasonableness has been considered the Court should remove all unavoidable costs before making any deduction to reach a proportionate figure. ***Credit reference to any authority cited on the application of proportionality, e.g:*** BNM v MGN Ltd [2017], May v Wavell Group [2016], May v Wavell Group [2017], West and Demouilpied v Stockport NHS Foundation Trust [2020]. ***Assessment and good reason:*** Where there is no CMO in place and the costs exceed the budget by 20% or more the receiving party must serve a statement of reasons with the bill. CPR 3.18 is not ambiguous. Estimated costs agreed and subject to a Cost Management Order have already, in theory, been through a detailed assessment. It would be going against the intent of the rule to require another detailed assessment of estimated costs	Up to 5 Marks To achieve more than a pass, candidates must not simply cite law but should show a greater depth to their knowledge base and apply the authority to the question posed

to be performed without 'good reason'. ***Credit reference to any authority cited on assessment and good reason, e.g:*** CPR 3.18, CPR PD 44, 3.2, Vertannes v United Lincolnshire Hospitals NHS Trust [2018] and Harrison v University Hospitals Coventry and Warwickshire NHS Trust [2017].	

Question 6:	You are a Costs Lawyer at an SRA regulated firm, Taverham and Fletcher LLP, located in Towcester. You are working on the file of Liam Bradley who had brought a claim for damages and losses incurred as a result of a serious road traffic accident which occurred on the 3 January 2019. The matter was ultimately compromised at a Joint Settlement Meeting and a final order was made on 3 August 2021 which included authority for costs to be assessed. You are instructed to deal with the detailed assessment. Miss Grey is the solicitor that has conduct of the matter. The bill of costs in the matter was drafted by a former colleague of yours and it takes into account a costs management order dated 19 May 2020. You have been through the file and can see that you are seeking an upward departure from the budget in two phases (experts and ADR) and in the remaining phases you are seeking less in the bill of costs than was allowed for in the costs management order. The paying party has indicated that at detailed assessment they will raise the fact that at the CMC the sum claimed by you for the Experts phase was reduced by £20,000. They will also be suggesting that there has been substantial overspending on work done in the Witness Statements phase and that the phase was not completed. Write the body of a memo of advice to Miss Grey. Set out the hurdles you must overcome in order to achieve a departure from the costs management order in respect of all phases of the budget and the merits of the paying party's position in relation to the Experts and Witness Statements phases.
Total Marks Attainable	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, for example simply outlining the rules in relation to budgets and CMOs. The answer may not indicate any real understanding that costs management is in place in order to ensure cases are managed proportionately. 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 the candidate fully

		understands how the CPR operates and any view expressed will be unsupported by evidence or authority.
Pass	10+	An answer which addresses MOST of the following points: When a CMO will be made, in what circumstances a budget can be amended, what amounts to a significant development and the impact of a CMO on assessment. Candidates will demonstrate a good depth of knowledge of the subject with good application and some analysis, although the candidate may demonstrate some areas of weakness.
Merit	12+	An answer which addresses ALL of the points required for a pass (as set out above) PLUS there will be evidence that the candidate has a very good understanding of the law in some depth but this may be expressed poorly or may be weak in places and strong in others. The candidate should show very good, appropriate references to the relevant law and authority. Work should be written to a very high standard with few, if any, grammatical errors or spelling mistakes etc.
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 the candidate should be supported by relevant authority and/or case law throughout. The candidate may make the link between 'good reason' and 'significant development' (i.e. may include a discussion on the fact there is no real authority on the difference or relationship between the two but that one is prospective and one retorspective). The candidate should be able to show critical assessment and capacity for independent thought on the topic. Work should be written to an exceptionally high standard with few, if any, grammatical errors or spelling mistakes etc. taking into account it has been written under exam conditions.

Indicative Content	**Marks**
Required: Explanation as to what is meant by a Costs Management Order, e.g: ***Costs Management Order:*** Where a costs budget has been filed, the court will make a costs management order unless it considers the matter can be conducted justly and proportionately without a costs management order. A costs management order will record the extent the incurred costs were agreed; the extent budgeted costs were agreed; and the approval of budgeted costs once revised. Once a CMO has been made, the court can control the recoverable costs. The court can record on the face of the order any comments on the incurred costs to be taken into account at detailed assessment. The CMO concerns only the phase totals; it is not the role of the judge to fix or approve hourly rates; and any detail within the budget is for reference purposes only. ***Credit reference to any authority cited on CMOs, e.g:*** CPR 3.15(2), CPR 3.15(3), CPR 3.15(4), CPR 3.15(8). ***Estimated Costs and Incurred Costs at CMC:*** The court may, in determining the amount of a given phase to which approval is given, take into account the costs incurred to date by setting a figure which impliedly criticises those costs as being excessive and leaving very little for prospective costs. When making a CMO it will be an error in principle in approving specific hours and disbursements rather than total figures for each phase of the proceedings and in expressly reserving matters, such as hourly rates, to be disputed at a detailed assessment. Incurred costs will be subject to DA and the estimated costs will be subject to the test of proportionality.	Up to 4 marks To pass candidates MUST include an explanation of what a CMO is and the impact where costs are assessed

Credit reference to any authority cited on estimated costs and incurred costs, e.g: Redfern v Corby Borough Council [2014], CIP Properties Ltd v Galliford Try Infrastructure Ltd [2015], Yirenki v Ministry of Defence [2018] and Harrison v University Hospitals Coventry and Warwickshire NHS Trust [2017].	
Credit discussion on assessment and good reason to depart, e.g: ***Assessment:*** Where there is no CMO in place and the costs exceed the budget by 20% or more the receiving party must serve a statement of reasons with the bill. Where there is a CMO in place and costs are assessed on the standard basis consideration must be given to the last approved or agreed costs budget of the receiving party and there cannot be any departure from this unless there is good reason. Additionally, any comments made on incurred costs can be considered. CPR 3.18 is not ambiguous. Estimated costs agreed and subject to a Cost Management Order have already, in theory, been through a detailed assessment. It would be going against the intent of the rule to require another detailed assessment of estimated costs to be performed without 'good reason'. A CMO cannot be deemed superseded. Even where there is, on the face of it, a good reason to depart this isn't a good reason to depart from the CMO generally. ***Credit reference to any authority cited on the assessment of costs where there is a budget, e.g:*** CPR PD 44, 3.2, CPR 3.18, Harrison v University Hospitals Coventry and Warwickshire NHS Trust [2017] and Vertannes v United Lincolnshire Hospitals NHS Trust [2018]. ***Hourly rates:*** At one stage it was thought that, hourly rates were deemed a good reason to depart because they are a mandatory component in Precedent H which cannot be subjected to the rigours of detailed assessment at the CCMC. However the present position is that a reduction in hourly rates for incurred costs does not appear to mean it follows that there should be a reduction on budgeted costs. ***Credit reference to any authority cited on hourly rates, e.g:*** Merrix v Heart of England NHS Trust [2017], RNB v London Borough of Newham [2017], Bains v Royal Wolverhampton NHS Trust [2017], Nash v Ministry of Defence [2018] and Jallow v Ministry of Defence [2018]. ***The indemnity principle:*** The indemnity principle is a good reason to depart. Once you have established a good reason for a phase you are free to challenge any other sums within that phase without identifying further good reason. ***Credit reference to any authority cited on the indemnity principle, e.g:*** Merrix v Heart of England NHS Trust [2017] and Barts Health NHS Trust v Hilrie Rose Salmon [2019]. ***Underspend:*** Not spending the totality of the budgeted figure for a phase because of settlement is not in itself a good reason to depart. There	Up to 12 marks To achieve more than a pass candidates should demonstrate real awareness that persuading the court to depart from a CMO will be difficult and case dependant depending on the evidence

would need to be very clear evidence of obvious overspending in a particular phase before the court could even begin to entertain arguments that there was a good reason to depart from the budgeted phase figure if the amount spent comes within the budget. ***Credit reference to any authority cited on underspend, e.g:*** Chapman v Norfolk and Norwich University Hospitals NHS Foundation Trust [2020] and Utting v City College Norwich [2020].	
Credit a discussion on what is meant by significant development, e.g: ***Meaning:*** There is no clear definition of what is meant by a significant development. A change in the value of the claim or a longer trial length has been held not to amount to a significant development in the case. Conduct may be a significant consideration for the court in arriving at their decision. 'Significant development' requiring budget revision need not be a specific event but can be a "collection of factors" which mean that the nature of the claim has changed. Not every development in litigation will amount to a significant development. ***Credit reference to authority on what is meant by a significant development, e.g:*** Churchill v Boot [2016], Thompson v NSL Ltd [2021] and Persimmon Homes Ltd & Anor v Osborne Clark LLP [2021] ***Disclosure:*** Claimants have been entitled to revise their trial budget because there had been a significant development in the litigation where disclosure was of a scale and complexity that was much larger than had actually been budgeted for, which was not envisaged and which could not have been reasonably envisaged. Disclosure that involved five times more documents than anticipated and expressly assumed in a claimant's budget has been held to be a significant development justifying its costs budget being updated. ***Credit reference to authority on disclosure amounting a significant development, e.g:*** Al-Najar v the Cumberland Hotel (London) Ltd [2018] and BDW Trading Ltd v Lantoom Ltd [2020]. ***Interim applications:*** Interim applications may be significant developments. If interim applications are made which, reasonably, were not included in a budget, then the costs of such interim applications shall be treated as additional to the approved budgets. It should be noted that whilst the application itself may sit outside of the budgeted costs the consequential costs as a result of the application may mean the budget needs revising. ***Credit reference to interim applications, e.g:*** Sharp v Blank [2017] and CPR 3.17(4).	Up to 6 Marks If candidates have included any discussion on significant development they should only be credited where they have used it to demonstrate the relationship between good reason and significant development

Question 7:	You are a Costs Lawyer working in-house for a firm of solicitors in Birmingham. David Coleman, an Associate Solicitor at the firm, has

	been instructed by Mr and Mrs Timms with regards to their 10 year old son, Harry Timms. Harry has complex needs, including a rare degenerative metabolic condition, severe autistic spectrum disorder, significant hearing impairment and epilepsy. In his case these conditions are severe and life-limiting, such that his life expectancy is early to mid-teens. The Local Authority has issued an Education, Health and Care plan for Harry, but Mr and Mrs Timms disagree with parts of that plan. David Coleman has therefore been advising them on their right of appeal to the First-tier Tribunal (Special Educational Needs and Disability). David Coleman has advised Mr and Mrs Timms that the applicable procedural rules are the Health, Education and Social Care Chamber tribunal rules. David is instructed to send an appeal form to the Tribunal and he has two months within which to do that. David is now writing to the clients to advise them about what happens after their appeal is submitted and what happens at the hearing. He would like to provide some advice to his clients on the risk of an adverse costs order being made in the case. It is upon this point that he has approached you for your input. Prepare the body of an email to David Coleman setting out the rules in the lower tier tribunals in respect of costs and specifically when a costs order may be made.
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: 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, 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 are also likely to have explored wasted costs orders. Candidates will demonstrate a good depth of knowledge of the subject 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 law on wasted costs in tribunals) with very good application and some analysis having regard to the facts. Candidates are likely to observe that, in this scenario, that, whilst the tribunal does have jurisdiction to make orders for costs, that they will only be made where conduct leads to the making of such an order. 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. 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: Candidate should refer to legislative framework to describe the jurisdiction, e.g: ***Legislative framework:*** Tribunals governed by TCEA 2007, but each chamber is also governed by its own set of Procedure Rules. Costs shall be in the discretion of the tribunal and tribunals have full power to determine by whom and to what extent costs are to be paid. Costs orders can be made against a representative. The legislation defines wasted costs as 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 relevant Tribunal considers it is unreasonable to expect that party to pay. ***Credit reference to any authority cited on the legislative framework, e.g:*** Tribunals, Courts and Enforcement Act 2007, Section 29 (1) of the Tribunals, Courts and Enforcement Act 2007, Section 29 (2) of the Tribunals, Courts and Enforcement Act 2007, Section 29 (3) of the Tribunals, Courts and Enforcement Act 2007, Section 29(4) of the Tribunals Courts and Enforcement Act 2007, and Section 29(5) of the Tribunals Courts and Enforcement Act 2007. ***The First-tier Tribunal:*** Hears appeals from citizens against decisions made by Government departments or agencies although proceedings in the Property Chamber are on a party v party basis as are proceedings in the Employment Tribunal. There are seven chambers of the first tier tribunal. Social Entitlement Chamber; Health, Education and Social Care Chamber; Tax Chamber; General Regulatory Chamber; Immigration and Asylum Chamber; War Pensions and Armed Forces Compensation Chamber; and Property Chamber. ***The Upper Tribunal:*** Primarily, but not exclusively, reviews and decides appeals arising from the First–tier Tribunal. Like the High Court, it is a superior court of record as well having the existing specialist judges of the senior tribunals judiciary at its disposal it can also call on the services of High Court judges. ***Credit reference to any authority cited on the relevant rules, e.g:*** Tribunal Procedure (First Tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008; Tribunal Procedure (First Tier Tribunal) (War Pensions and Armed	Up to 6 marks

Forces Compensation Chamber) Rules 2008; Tribunal Procedure (First Tier Tribunal) (Social Entitlement Chamber) Rules 2008.	
Candidate should refer to any of the specific tribunal rules and how that effects its jurisdiction to make costs orders, e.g: ***No Power to Award:*** The First Tier Tribunal Social Entitlement Chamber has no power to award costs. The First Tier Tribunal Social Entitlement Chamber has no power to award costs. Other first tier tribunals may make orders in respect of wasted costs and unreasonable conduct. ***Credit reference to any authority cited on the relevant rules, e.g:*** Rule 10 of the Tribunal Procedure (First Tier Tribunal) (Social Entitlement Chamber) Rules 2008 and Rule 10 of the Tribunal Procedure (First Tier Tribunal) (War Pensions and Armed Forces Compensation Chamber) Rules 2008. ***Jurisdiction of the first tier Health, Education and Social Care Chamber:*** The first tier Health, Education and Social Care Chamber may make orders for wasted costs or if the tribunal considers that a party has acted unreasonably in bringing, defending or conducting proceedings. The Tribunal may not make an order where a party has acted unreasonably in bringing, defending or conducting proceedings in mental health cases. The Tribunal may make an order in respect of costs on an application or on its own initiative. ***Credit reference to any authority cited on the relevant rules, e.g:*** Section 29(4) TCEA 2007, Rule 10(1) of the Tribunal Procedure (First-Tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008, Rule 10(2) of the Tribunal Procedure (First-Tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008.	Up to 4 marks To achieve more than a pass, candidates must not simply cite law but should show a greater depth to their knowledge base and apply the authority to the question posed
Candidate may refer to the procedure for making a costs order in the Health, Education and Social Care Chamber, e.g: ***Applications:*** A person making an application for an order under this rule must send or deliver a written application to the Tribunal and to the person against whom it is proposed that the order be made and send or deliver a schedule of the costs claimed with the application. An application for an order may be made at any time during the proceedings but may not be made later than 14 days after the date on which the Tribunal sends the decision notice recording the decision which finally disposes of all issues in the proceedings. The Tribunal may not make an order against a person without first giving that person an opportunity to make representations and if the paying person is an individual, considering that person's financial means. ***Credit reference to any authority cited on making an application, e.g:*** Rule 10(4) of the Tribunal Procedure (First-Tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008, Rule 10(5) of the Tribunal Procedure (First-Tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008	Up to 5 marks

and Rule 10(6) of the Tribunal Procedure (First-Tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008. ***Assessment:*** The amount of costs to be paid under an order may be ascertained by summary assessment by the Tribunal, agreement of a specified sum by the paying person and the person entitled to receive the costs ("the receiving person"); or assessment of the whole or a specified part of the costs incurred by the receiving person, if not agreed. Following an order for assessment under paragraph the paying person or the receiving person may apply to a county court for a detailed assessment of costs in accordance with the CPR 1998 on the standard basis or, if specified in the order, on the indemnity basis. ***Credit reference to any authority cited on the assessment of the costs, e.g:*** Rule 10(7) of the Tribunal Procedure (First-Tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008 and Rule 10(8) of the Tribunal Procedure (First-Tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008.	
Candidate should refer to any specific authority on wasted costs orders, e.g: ***Principles on wasted costs orders:*** Wasted costs orders are discretionary. A mere mistake is not sufficient for a wasted costs order, there must be unreasonable, improper or negligent conduct. Wasted costs orders should not be used as a threat. The respondent must be alerted to the possibility of a wasted costs order, must be apprised of the case against him and must be given adequate time and opportunity to respond. A wasted costs order can never be made where the causal link between conduct and costs incurred does not exist. The Tribunal should exercise its power to make a wasted costs order of its own motion with restraint. Indemnity costs orders are no longer limited to cases where the court wishes to express disapproval of the way in which litigation has been conducted. Can be made even when the conduct could not properly be regarded as deserving of moral condemnation. The court must consider each case on its own facts. Conduct must be unreasonable to a high degree. 'Unreasonable' in this context does not mean merely wrong or misguided in hindsight. Whilst the pursuit of a weak claim will not usually, on its own, justify an order for indemnity costs, the pursuit of a hopeless claim (or a claim which the party pursuing it should have realised was hopeless) may well lead to an indemnity basis order. ***Credit reference to any authority cited on the principles behind making a wasted costs order, e.g:*** Harley v McDonald [2001], Ridehalgh v Horsefield [1994], Orchard v SE Electricity Board [1987], Cancino [2015], Awuah and Others [2017], Noorani v Calver [2009], Kiam v MGN Limited No2 [2002] and Wates Construction Limited v HGP Greentree Alchurch Evans Limited [2006].	Up to 7 marks To achieve more than a pass, candidates must not simply cite law but should show a greater depth to their knowledge base and apply the authority to the question posed

Question 8:	You work in-house as a Costs Lawyer at Donaldson and Dobbs LLP, an SRA regulated firm in London. The firm has a large family law department and they specialise in financial relief and Children Act Proceedings. The firm does not have a legal aid franchise. Jenny Dobbs, a Senior Partner at the firm, has requested some costs advice in relation to the following matters: a) On the file of Mrs Adeji who has a child with Mr Adeji. Mr Adeji made an application for a child arrangement order, prohibited steps order and specific issue orders in respect of the child, Adeoye Adeji. In a fact-finding hearing a finding was made that the father was responsible for the fatal poisoning of the maternal grandfather and the non-fatal poisoning of the mother and maternal grandmother. b) On the file of Mr Musk who married in November 2014, after a brief romance during the summer of 2014. There are no children of the family. The matrimonial home is in the sole name of Mr Musk and is worth £1 million. The property is mortgage free. Proceedings have been issued by Mrs Musk for financial relief following the pronouncement of the first decree within divorce proceedings. c) On the file of Ms Fen Zhang, who is the applicant in proceedings brought under the Trusts of Land and Appointment of Trustees Act 1996, pursuant to which she claims a beneficial interest in her former home. The defendant to the proceedings is Mr Dominic Taylor. Ms Zhang and Mr Taylor had been in a relationship for 14 years. The claim is for a 50% beneficial interest or share in a property called Manod House. Write the body of a memo to Ms Dobbs setting out how costs in these three family cases would usually be dealt with.
Total Marks Attainable	20

Fail	up to 9.9	This mark should be awarded to candidates whose papers fail to address any of the requirements of the question, or only touch on some of the more obvious points without dealing with them or addressing them adequately. An answer which makes little or no sense OR is so poorly written as to lack coherence OR the answer will only demonstrate an awareness of some of the more obvious issues and is likely to be poorly written.
Pass	10+	An answer which includes MOST of the requirements, namely: An explanation of what family proceedings are, explanations of the three costs regimes in family proceedings and an explanation as to the rules on assessment under the CPR. The answers will be written to a reasonable standard, but may contain some grammatical errors or spelling mistakes etc. Appropriate authority will be used throughout although some points advanced may not be supported.

Merit	12+	For a mark in this band, the answer will deal with ALL of the requirements required for a pass however, candidates will have produced responses that have more depth and more application and analysis, as appropriate. Candidates will have identified that in relation to the first case the clean sheet regime would apply, in the second case the no order regime would apply and in the third case the costs follow the event regime would apply. Candidates will have produced responses which are written to a high standard with few, if any, grammatical errors or spelling mistakes etc.
Distinction	14+	An answer which includes ALL of the requirements for a pass (as set out above) PLUS demonstrates an excellent depth of knowledge. Excellent application of the law to the arguments made and critical analysis of the same. All views expressed by candidates should be supported by relevant authority and/or case law. Work which is written to an exceptionally high standard with few, if any, grammatical errors or spelling mistakes etc.

Indicative Content	**Marks**
Required (consideration as to what is meant by a family case and a discussion on how costs in family cases are usually dealt with, e.g): ***No single source provides an all-encompassing definition of family proceedings:*** Family cases may include (for example): Marriage and civil partnership; Matrimonial and partnership finance; The care of children either by their parents or by the state; Domestic abuse; The way in which a family home is occupied; Child abduction; Egg and sperm donors; and Gender recognition. ***Credit reference to any authority on the diverse nature of family proceedings, e.g:*** Section 58A of the Courts and Legal Services Act 1990 and the Courts Act 2003. ***FPR or CPR:*** In some family cases the CPR will apply rather than the FPR 2010. The FPR apply to family proceedings in the High Court and the Family Court. Family proceedings are defined with reference to section 75(3) of the Courts Act 2003, i.e as those in the Family Court and proceedings in the Family Division of the High Court where they cannot be heard by another division. ***Credit reference to any authority cited on how costs in family cases are usually dealt with, e.g:*** Rule 2.1 of the Family Procedure Rules 2010, Rule 2.3 of the Family Procedure Rules 2010, Section 75(3) of the Courts Act 2003, and Rule 28 and the Practice Direction 28A of the Family Procedure Rules 2010	Up to 6 marks To achieve more than a pass the candidate must not simply cite the law but demonstrate an understanding of how the rules operate
Credit discussion on the clean sheet regime in relation to the first matter, e.g: ***Clean sheet regime:*** This follows the FPR costs rules. This regime applies in all cases heard in the Family Court other than financial remedy proceedings. It also applies to those proceedings heard in the Family Division of the High Court which can only be allocated to the Family Division. This regime provides that the starting point is that there will be no costs shifting, parties bear their own costs, examples include Children Act 1989 proceedings (both public and private). The court may make such order as it considers just. The Costs provisions in the CPR will apply with some modification, for example; this rule disapplies the general rule and basis of assessment. The court's discretion, the factors to take into account when making an order and the	Up to 6 marks

definition of conduct are not excluded and therefore do apply. If the court decide to make an order where there is costs shifting then the starting point should be costs follow the event. ***Credit reference to any relevant authority on the clean sheet regime, e.g.:*** Rule 28.1 of the Family Procedure Rules 2010, Rule 28.2 of the Family Procedure Rules 2010, CPR 44.2(2), CPR 44.2(1), CPR 44.2(4), CPR 44.2(5) and Solomon v Solomon (2013).	
Credit discussion on how the costs in the second matter should be dealt with, i.e the No Order regime, e.g: ***The 'no order regime':*** Prevails in all financial remedy proceedings. This regime means there is unlikely to be any costs shifting. Financial remedy proceedings and proceedings in connection with a financial remedy, requiring a financial order. The general rule is that there shall be no order as to costs in financial remedy proceedings. This regime applies to the substantive final hearing of an application for an order in financial remedy proceedings and to interim variation orders. The CPR apply with some modifications. The court does not have discretion as to costs, the factors that the court should consider when making an order do not apply and nor does the definition of conduct within the CPR. ***Proceedings in connection with a financial remedy:*** Such proceedings include: Interim orders; Interim hearings; Final orders to set aside an application; Determination of a beneficial share in property; and Disposing of the application other than by final financial order. ***Credit reference to any authority on the No Order regime, e.g:*** Rule 28.3(1) of the Family Procedure Rules 2010, Rule 28.3(2) of the Family Procedure Rules 2010, Rule 28.3(4)(b) of the Family Procedure Rules 2010, Rule 28.3(5) of the Family Procedure Rules 2010, CPR 44.2 (1), CPR 44.2 (4) and CPR 44.2 (5). ***When the court may make an order in financial remedy proceedings:*** The court may make an order if it is considered appropriate on the grounds of conduct. Conduct is defined so as to include any failure by a party to comply with these rules, any order of the court or any practice direction which the court considers relevant. Conduct is defined so as to include any open offer to settle made by a party, whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue, any other aspect of a party's conduct in relation to proceedings which the court considers relevant and the financial effect on the parties of any costs order. ***Credit reference to any authority on when the court may make an order in financial remedy proceedings, e.g:*** Rule 28.3(6) of the Family Procedure Rules 2010, Rule 28.3(7)(a) of the Family Procedure Rules 2010, Rule 28.3(7)(b) of the Family Procedure Rules 2010, Rule 28.3(7)(c) of the Family Procedure Rules 2010, Rule 28.3(7)(d) of the Family Procedure Rules 2010, Rule 28.3(7)(e) of the Family Procedure Rules 2010, Rule 28.3(7)(f) of the Family Procedure Rules 2010 and AB v CD [2016].	Up to 7 marks

Credit discussion on the costs follow the event regime in relation to the third matter, e.g: ***Costs follow the event regime:*** From the CPR, generally requires the unsuccessful party to pay the costs of the successful party. This is the costs regime applicable to the Family Division of the High Court when dealing with proceedings under statutes which can be allocated to other divisions of the High Court, for example in TOLATA 1996 claims. ***Credit reference to any relevant authority on costs assessment, e.g.:*** CPR 44-48.	Up to 3 marks
Any relevant point to describe costs orders and assessment in family proceedings, e.g: ***Indemnity costs:*** Are unusual in family proceedings unless the conduct of a litigant is considered in some material respect(s) to be unreasonable or a disproportionate use of the court's time and resources. However they may be made and stand as a stark warning in relation to conduct in financial remedy proceedings. ***Credit reference to any authority on indemnity costs, e.g.:*** H v Dent (Re an Application for Committal (No. 2: Costs)) [2015] and MB v EB [2019]. ***Costs assessment in family proceedings:*** Where they are costs that do not involve legal aid they are assessed in accordance with the CPR. The CPR apply to all between the parties costs assessments. On an assessment on the standard basis the court will only allow costs that are proportionate to the matters in issue and resolve any doubt as to whether they were reasonably incurred or reasonable and proportionate in amount in favour of the paying party. Where costs are assessed on an indemnity basis the amount recoverable under an indemnity costs order may be significantly higher as the court will consider any doubt as to whether costs are reasonably incurred or reasonable in amount in favour of the receiving party. The Court may reduce a claim for costs in a family case because the sum spent is disproportionate to the legal issue raised. ***Credit reference to any relevant authority on costs assessment, e.g.:*** CPR 44.3(1)(a), CPR 44.3(2), CPR 44.3(1)(b), CPR 44.3(3), J v J [2014], Seagrove v Sullivan [2014], Joy v Joy-Morancho & Ors (No 3) [2015] and K v K [2016].	Up to 3 marks

Question 9:	You work as a Costs Lawyer for Thompson and Timothy LLP, an SRA regulated firm who based in Nottingham. One of the solicitors at the firm, Mr Thompson, has contacted you in connection with a contentious probate matter. He has a query on the file and is seeking your advice. Mr Thompson's client, Ms Hillary Turner, is the executer and a beneficiary of Mr Brian Court's Will. Mr Brian Court was Hillary Turner's former colleague. Until February this year, Mr Court's Will left his entire estate to be divided equally between his two nieces, Elizabeth and Jennifer. Sometime in February Mr Court had decided he wanted to change his Will and he telephoned Hillary Turner and asked her to help him make arrangements. Ms Turner telephoned Mr Court's solicitors and made him an appointment. She also drove him to their offices for the appointment. Mr Court instructed the firm to prepare a new Will, which was not executed at the solicitor's office, but was executed elsewhere. In his new Will, Mr Court left his house, the main asset in the estate, in its entirety to Ms Turner. Mr Court died on the 10 March 2022, 14 days after the new Will was executed. His nieces wish to challenge the validity of the Will. Elizabeth thinks that Ms Turner pressurised and coerced Mr Court, which means his later Will is not valid. Jennifer has adopted a different approach; she has not advanced a positive claim that the Will is invalid but wants the Will to be proved in solemn form. As part of the advice to Ms Turner, Mr Thompson would like to include some information on the way costs may be dealt with in contentious probate matters. Write the body of a memo to Ms Turner setting out the rules on costs in contentious probate matters, with specific consideration of the general rule under the CPR.
Total Marks Attainable	20

Fail	up to 9.9	This mark should be awarded where candidates: fail to advise on the framework of the rules governing the granting of a costs capping order, fail to adhere to the instructions provided in the question completely or in a substantial part of the answer. An answer which makes little or no sense or is so poorly written as to lack coherence.
Pass	10+	Candidates may have considered MOST of the following: the general rule and its applicability in contentious probate matters, the three exceptions to the general rule in contentious probate and the propositions in Kostic. Credit will be given to any reasonably written answer and any reasonable conclusion. Candidates should use appropriate references to the relevant law and authority throughout but not all points advanced may be appropriately supported.
Merit	12+	An answer which includes ALL of the requirements for a pass (as set out above) PLUS Candidates will have produced responses that have more depth and with more application to the facts provided. There will also be a demonstration that the candidate is able to analyse, as appropriate. Candidates are likely to have recognised that in this scenario there is a personal representative who may obtain costs from the estate unless paid by another party, the case involves the exception within the CPR where no positive case has been advanced and the final party may have been the cause of the litigation which may trigger an exception in spiers. Candidates will have produced responses which are written to a high standard with few, if any, grammatical errors or spelling

		mistakes etc. taking into account it is written under exam conditions.
Distinction	14+	An answer which includes ALL of 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. Candidates should have a clear and reasoned view as to the rules on costs capping orders. The advice should be very well structured. Work should be written to an exceptionally high standard with few, if any, grammatical errors or spelling mistakes etc. taking into account it has been written under exam conditions.

Indicative Content	**Marks**
Required (discussion of the application of the CPR in contentious probate cases) e.g : ***The general rule:*** The general rule that costs follow the event applies to costs in non-contentious probate, contentious probate and Inheritance (Provision for Family and Dependents) Act 1975 claims. Following this rule, the costs of contentious probate proceedings should be paid by one or more of the parties rather than by the estate. The court does retain the power to 'make a different order' in contentious probate matters. The relevant factors the court should consider when making an order for costs includes conduct. The CPR sets out what conduct means and this includes any relevant pre-action protocol. Whilst not a pre-action protocol, the Association of Contentious Trust and Probate Specialists' (ACTAPS) Code is explicitly referred to within this part of the CPR. ***Credit reference to any authority cited on the general rule in contentious probate claims, e.g:*** CPR 44.2(2)(a), CPR 44.2(2)(b), CPR 44.2(4), CPR 44.2(5) and CPR 44.2(5)(a). ***Applicability of other parts of the CPR:*** The rules on discontinuance do not apply in contentious probate matters. CPR 36 applies in contentious probate matters. Offers must be valid Part 36 offers, i.e consistent with the wording of Part 36 in order that the more advantageous consequences of Part 36 apply. ***Credit reference to any authority cited on the applicability of other parts of the CPR, e.g:*** CPR 57.11(1), CPR 38, CPR 36 and James v James and Ors [2018]	Up to 4 marks
Required (discussion of the three exceptions to the 'normal' rule that 'costs follow the event) e.g: ***There are three exceptions to the general rule:*** There are three exceptions to the general rule that costs follow the event, the first of three exceptions is found within the CPR and this states that when costs should not follow the event in probate. This is the procedure for requiring a will to be proved without advancing a positive case. The normal rules as to costs contained in the CPR should also be followed in probate actions save only that the judge should also take account of the guidance in the Spiers case, where an alternative costs order might be made. The second and third exceptions are therefore found in the common law. These provide that where a testator had been	Up to 4 marks

the cause of the litigation, costs should come out of the estate and where the circumstances led reasonably to an investigation of the matter, costs should be borne by both sides. ***Credit reference to any authority cited on the exceptions, e.g:*** CPR 57.7(5), Re Good, deceased; Carapeto v Good and Others [2002] and Spiers v English [1907].	
Credit any relevant point in relation to a discussion of the exception in CPR 57.7.5 e.g: ***The exception in CPR 57.7.5:*** A defendant may give notice in his defence that he does not raise any positive case but insists on the will being proved in solemn form and will cross-examine the witnesses who attested the will. If a defendant gives such a notice, the court will not make an order for costs against him unless it considers that there was no reasonable ground for opposing the will. Where a positive case is advanced the defendant may not be afforded costs protection and an order may be made against them where they are either unsuccessful or discontinue their claim. ***Credit reference to any authority cited on the exception in CPR 57.7.5, e.g:*** CPR 57.7(5)(a), CPR 57.7(5)(b) and Wharton v Bancroft [2012].	Up to 2 marks
Credit any relevant point in relation to a discussion of the first exception in Spiers v English e.g: ***Exception 1:*** Where the testator himself has, or the residuary beneficiaries have, been the cause of the litigation in these cases costs should come out of the estate. The basis of all rules on this subject should rest upon the degree of blame to be imputed to the respective parties. Here, blame is being used in a causal rather than a moral sense. It may be possible for the testator's incapacity to trigger the exception just as readily as his failure to make a clear will. This exception does not apply to a testator who gives beneficiaries a false impression of what is going to be in his will. One unfortunate consequence of the first exception laid down in *Spiers v English* is in many circumstances to require a beneficiary who succeeds in proving the will to pay the costs of the losing challengers: where, for example, there is no residue. ***Credit reference to any authority cited on the first exception in Spiers v English, e.g:*** Mitchell v Gard (1863), Kostic v Sir Malcolm Chaplin and Mr Martin Saunders (chairman and secretary of the Conservative Party Association) & HM Attorney-General [2007], Re Cutcliffe's Estate [1959] and Wharton v Bancroft [2012].	Up to 4 marks
Credit any relevant point in relation to a discussion of the second exception in Spiers v English e.g: ***Exception 2:*** Where neither the testator nor the residuary beneficiaries are to blame for the litigation, but circumstances lead reasonably to	Up to 4 marks

an investigation of the matter: parties should bear their own costs. If, having taken all proper steps to inform themselves as to the facts of the case, the challengers nevertheless *bona fide* believe in the existence of a state of things which, if it did exist, would justify litigation, then, although no blame should attach to the testator or to the executors and persons interested in the residue, each party must bear his own costs. ***Credit reference to any authority cited on the second exception in Spiers v English, e.g:*** Mitchell Davies v Gregory (1873)	
Credit a discussion of the 4 propositions in *Kostic* e.g: ***Kostic:*** Mr Justice Henderson held that the two recognised exceptions from *Spiers* were guidelines not straitjackets. He went on and held that a number of propositions as to the meaning of the exceptions could be derived from authorities decided before *Spiers*. ***Proposition 1:*** In order for the first exception to apply, the touchstone was whether it was the testator's own conduct or the conduct of those interested in the residue that caused the litigation which had led to his Will being surrounded with confusion or uncertainty in law or fact. If it was the testator's own conduct it should not matter whether the problem related to the state in which the deceased left his testamentary papers, for example, where a will could not be found, or to the capacity of the deceased to make a will. ***Proposition 2:*** Moral blameworthiness was not the criterion for the application of the first exception. ***Proposition 3:*** There was no correlation between eccentricity and testamentary incapacity. ***Proposition 4:*** The second exception applied, and each party would bear their own costs, where neither the testator nor the persons interested in the residue had been to blame, but where the opponents of the will had been led reasonably to the bona fide belief that there were good grounds for impeaching the Will. The trend of more recent authorities was to encourage a very careful scrutiny of any case in which the first exception was said to apply and to narrow, rather than extend, the circumstances in which it would be held to be engaged. Further, each side should bear its own costs in an intermediate period of the proceedings up to the date on which expert reports were exchanged; whereafter costs should follow the event. ***Credit reference to any authority cited on the second exception in Kostic, e.g:*** Kostic v Sir Malcolm Chaplin and Mr Martin Saunders (chairman and secretary of the Conservative Party Association) & HM Attorney-General [2007], Mitchell v Gard [1863], Davies v Gregory	Up to 2 marks

[1873], Boughton v Knight [1873].	
Any other relevant point to describe costs in contentious probate (credit any case law/points of law correctly cited and applied) e.g: ***Personal representatives:*** Where a personal representative has incurred costs on behalf of the estate and no other party has been ordered to pay them then they are entitled to recover them from the Estate on the indemnity basis. Personal representatives may have a prima facie right to recover costs from the estate but this may be deprived of them by Order of the Court. ***Credit reference to any authority cited on the costs of personal representatives, e.g:*** CPR 46.3, CPR 46.3(2), CPR 46.3(3) and Re Coles Estate [1962]. ***Unsuccessful challenge*:** There have been cases where an unsuccessful challenge to the Will meant costs followed the event. However, the court have considered whether executors should have their costs out of the estate unless they had acted unreasonably. The court has been reluctant to do anything to create the idea that unsuccessful litigants might get their costs out of the estate. ***Credit reference to any authority cited unsuccessful challenges, e.g:*** McCabe v MaCabe [2015] and Re Plant deceased [1926]. ***Conduct:*** Conduct in its broadest sense is a factor in some of the principles behind costs awards in probate claims. On a "half-win" basis the court may decide that the proper starting position is that the parties should each pay half of the others' costs however other factors may lead the court to depart from this approach. ***Credit reference to any authority cited on conduct, e.g*** Burgess v Penny [2019]	Up to 2 marks