ACL Training

September 2023: Marker Guidance: Unit 2

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

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

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

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

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

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

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

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

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

SECTION A (all compulsory – 40%)

Question 1:	Explain when the court may give summary judgment and the procedure that should be followed should a Defendant wish to make an application for summary judgment.

Total Marks Attainable Fail = 0-4.9 Pass = 5+ Merit = 6+ Distinction = 7+	10
Indicative Content	**Marks**
Required: Candidate should set out the grounds for a summary judgment and the proceedings in which a summary judgment is available, e.g ***Grounds for summary judgment and proceedings in which a summary judgment is available:*** CPR 24 sets out a procedure by which the court may decide a claim or a particular issue without a trial. The court may give summary judgment against a claimant or defendant on the whole of a claim or on a particular issue if it considers that the claimant has no real prospect of succeeding on the claim or issue or the defendant has no real prospect of successfully defending the claim or issue; and there is no other compelling reason why the case or issue should be disposed of at a trial. The court may give summary judgment against a claimant in any type of proceedings. The court may give summary judgment against a defendant in any type of proceedings except proceedings for possession of residential premises (against a mortgagor; or a tenant or a person holding over after the end of his tenancy whose occupancy is protected within the meaning of the Rent Act 1977 or the Housing Act 1988) and proceedings for an admiralty claim in rem. ***Credit reference to any authority cited on grounds for summary judgment and proceedings in which a summary judgment is available, e.g:*** CPR 24.1, CPR 24.2, CPR 24.3(1) and CPR 24.3(2).	Up to 3 marks A pass must refer to CPR 24 and set out what it means to apply for a summary judgment.
Credit any relevant point to explain the procedure, e.g: ***Procedure applicable to summary judgments:*** A claimant may not apply for summary judgment until the defendant against whom the application is made has filed an acknowledgement of service or a defence. This is unless the court gives permission; or a practice direction provides otherwise. Where a summary judgment hearing is fixed, the respondent (or the parties where the hearing is fixed of the court's own	Up to 6 marks A pass must refer to CPR 24 and set out what it means to apply for a

initiative) must be given at least 14 days' notice of the date fixed for the hearing and the issues which it is proposed that the court will decide at the hearing. ***Credit reference to any authority cited on the procedure applicable to summary judgments, e.g:*** CPR 24.4(1) and CPR 24.4(3). ***Making an application:*** Under CPR 23 an application notice means a document in which the applicant states his intention to seek a court order and respondent means the person against whom the order is sought and such other person as the court may direct. The general rule is that a copy of the application notice must be served on each respondent. An application may be made without serving a copy of the application notice if this is permitted by a rule a practice direction or a court order. An application notice must state what order the applicant is seeking and briefly, why the applicant is seeking the order. A copy of the application notice must be served as soon as practicable after it is filed and except where another time limit is specified in these Rules or a practice direction, must in any event be served at least 3 days before the court is to deal with the application. When a copy of an application notice is served it must be accompanied by a copy of any written evidence in support and a copy of any draft order which the applicant has attached to his application. ***Credit reference to any authority cited on the application, e.g:*** CPR 23.1, CPR 23.4(1), CPR 23.4(2), CPR 23.6, CPR 23.7(1) and CPR 23.7(3).	summary judgment.
Could also include a discussion on the evidence required for the purpose of a hearing and the power of the court, e.g: ***Evidence for the purposes of a summary judgment hearing:*** If the respondent to an application for summary judgment wishes to rely on written evidence at the hearing, he must file the written evidence and serve copies on every other party to the application, at least 7 days before the summary judgment hearing. If the applicant wishes to rely on written evidence in reply, he must file the written evidence and serve a copy on the respondent, at least 3 days before the summary judgment hearing. ***Credit reference to any authority cited on the evidence for the purposes of a summary judgment hearing, e.g:*** CPR24.5(1) and CPR24.5(2). ***Court's powers when it determines a summary judgment application:*** When the court determines a summary judgment application it may give directions as to the filing and service of a defence and give further directions about the management of the case. When dealing with an application under CPR 24 it does not involve the court conducting a mini trial and the criteria that the court needs to apply is not one of probability but is an absence of reality.	Up to 5 marks To achieve more than a pass a candidate must not simply cite the rules but should show a deeper understanding of the rules including an appreciation of the approach the court will take to an application for a SJ.

Credit reference to any authority cited on the court's powers when it determines a summary judgment application, e.g: CPR 24.6, Swain v Hillman [2001] and Three Rivers District Council v Bank of England (No. 3) [2001].	

Question 2:	Explain what qualified one-way costs shifting is, the impact the rules have on the court's discretion as to costs and when costs protection may be lost.	
Total Marks Attainable Fail = 0-4.9 Pass = 5+ Merit = 6+ Distinction = 7+		10
Indicative Content		**Marks**
Required (candidates are required to explore what QOCS is): ***QOCS limits:*** The circumstances in which such costs orders can be enforced and provides for circumstances where they can be enforced with or without court permission. ***Discretion as to costs:*** The Court retains discretion as to costs and QOCS does not impact this. The normal rule that the losing party to litigation is ordered to pay the winning party's costs is not displaced by QOCS. ***Credit reference to any authority cited on the court's discretion as to costs, e.g:*** CPR 44.2(1) and CPR 44.2(2)(a)		Up to 2 marks
Any other relevant point to describe where QOCS does/doesn't apply (credit any case law/points of law correctly cited and applied) e.g: ***QOCS applies to:*** Personal injury and fatal accidents claims both under the Fatal Accidents Act 1976 and under section 1(1) of the Law Reform (Miscellaneous Provisions) Act 1934. ***QOCS will not apply to:*** Applications for pre-action disclosure or where the claimant had entered into a 'pre-commencement funding arrangement'. A pre-commencement funding arrangement is essentially a CFA entered into before 1 April 2013. ***Examples of authority that may be considered:*** CPR 44.13, CPR 44.17, CPR 48, Wagenaar v Weekend Travel Ltd (trading as Ski Weekend) & Serradj [2014], Catalano v Espley-Tyas Development Group [2017], Price v Egbert Taylor & Co. [2016] and Landau v Big Bus Co Ltd [2014].		Up to 4 marks

Any other relevant point to describe the enforcement of costs orders where QOCS applies (credit any case law/points of law correctly cited and applied) e.g: ***Orders can be enforced:*** To the extent that the amount of the costs does not exceed the damages awarded to the claimant. The claimant can be ordered to pay the defendant's costs up to the amount awarded to him. This covers a situation where a claimant fails to beat a defendant's Part 36 offer. May only be enforced after the proceedings have been concluded and the costs have been assessed or agreed. ***Examples of authority that may be considered:*** CPR 44.14(1) and CPR 44.14 (2). ***Struck Out:*** Orders can be enforced where proceedings are struck out because there were no reasonable grounds for bringing the proceedings, there is an abuse of process or the conduct of the claimant (or a person acting on his behalf with his knowledge) is likely to obstruct the just disposal of the proceedings. ***Examples of case authority that may be considered:*** CPR 44.15, Wall v British Canoe Union [2015] (claim no. A38YP644) (Unreported), Brahilka v Allianz Insurance (Claim No. A93YP597 in the Romford County Court) (unreported), Reckitt Benckiser (UK) Ltd v Home Pairfum Ltd [2004], Kite v Phoenix Pub Group [2015] and Shaw v Medtronic Corevalve LLC and others [2017]. ***Fundamental dishonesty:*** Costs orders against claimants can be enforced to their full extent only with court permission where the claim is found, on the balance of probabilities, to be fundamentally dishonest. ***Examples of case authority that may be considered:*** CPR 44.16(1), Menary v Darnton [2016], Gosling v Hailo and Screwfix Direct [2014], Zurich Insurance v Bain [2015], Wagett v Witold [2015] and Howlett v Davies [2017]. ***Financial benefit of a person other than the claimant or a dependant:*** Where the proceedings include a claim which is made for the financial benefit of a person other than the claimant or a dependant within the meaning of section 1(3) of the Fatal Accidents Act 1976 (other than a claim in respect of the gratuitous provision of care, earnings paid by an employer or medical expenses) the court can make an order for costs against that other person. ***The claim includes a claim for financial benefit unrelated to personal injury:*** Costs orders against claimants can be enforced to their full extent providing the court has given permission where the claim	Up to 8 marks

includes a claim for financial benefit unrelated to personal injury either for the claimant or for another party. This part therefore gives the court the power to deny a claimant QOCS protection in a claim, for example, which is primarily a property damage claim but which includes a personal injury claim. ***Examples of case authority that may be considered:*** CPR 44.16(2)(a), CPR 44.16(2)(b), CPR PD 44, para 12.2, Howlett and Howlett v Davies and Ageas [2017], Jeffreys v Commissioner of Police for the Metropolis [2017] and Brown v Commissioner of Police of the Metropolis & Anor [2019].	

Question 3:	Outline the legislative provisions that govern when the Court can make a Wasted Costs Order against a legal representative and explain how an application for a Wasted Costs Order should be made.

Total Marks Attainable Fail = 0-4.9 Pass = 5+ Merit = 6+ Distinction = 7+	10
Indicative Content	**Marks**
Required - a discussion on the Courts general discretion as to costs e.g: ***Discretion:*** Costs payable by one party to another are the discretion of the court. The Court may consider a number of factors when determining what type of order to make. Court can consider conduct when making an order for costs ***Credit reference to any authority cited on the court's discretion, e.g:*** Section 51 of the Senior Courts Act 1981, CPR 44.2, CPR 44.2(4) and CPR 44.2(5).	Up to 2 marks
Credit the identification of key legislative provisions e.g: ***Legislative Provisions:*** The court shall have full power to determine by whom and to what extent the costs are to be paid. The court may disallow, or order the legal or other representative concerned to meet, the whole of any wasted costs or such part of them as may be determined in accordance with rules of court. Wasted costs means any costs incurred by a party as a result of any improper, unreasonable or negligent act or omission on the part of any legal or other representative or any employee of such a representative; or which, in the light of any such act or omission occurring after they were incurred, the court considers it is unreasonable to expect that party to pay. Where the court orders a legal representative to pay wasted costs it	Up to 4 marks

must inform an approved regulator or the Director of Legal Aid Casework as it considers appropriate. ***Credit reference to any authority cited on the legislative provisions, e.g:*** Section 51(3) of the Senior Courts Act 1981, Section 51(6) of the Senior Courts Act 1981, Section 51(7) of the Senior Courts Act 1981 and Section 51(7A) of the Senior Courts Act 1981.	
Credit a discussion the procedure for applying for and making a wasted costs order, e.g: ***The procedure of an application:*** The court will give the legal representative a reasonable opportunity to make written submissions or, if the legal representative prefers, to attend a hearing before it makes such an order. When the court makes a wasted costs order, it will specify the amount to be disallowed or paid. When the court makes a wasted costs order, it will direct a costs judge or a district judge to decide the amount of costs to be disallowed or paid. Such orders can be made at any stage in the proceedings up to and including the detailed assessment proceedings. In general, applications for wasted costs are best left until after the end of the trial. The court may make a wasted costs order against a legal representative on its own initiative. A party may apply for a wasted costs order by filing an application notice in accordance with Part 23 or by making an application orally in the course of any hearing. Wasted costs applications should be left until the end of the trial. ***Credit reference to any authority cited on the procedure for applying for and making a wasted costs order, e.g:*** CPR 46.8(2), CPR 46.8(3)(a), CPR 46.8(3)(b), CPR 46 PD 5.2, CPR 46 PD 5.3 and CPR 46 PD 5.4.	Up to 4 marks
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	Up to 2 marks To achieve more than a pass, candidates must not simply cite law but should show a greater depth to their knowledge base and apply the authority to the question posed

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].	

Question 4:	Outline the provisions in the Costs Lawyer Code of Conduct on client money and how those provisions help ensure the protection of the public.

Total Marks Attainable Fail = 0-7.4 Pass = 7.5+ Merit = 9+ Distinction = 10.5+	10
Indicative Content	**Marks**
Required: A discussion on the CLSB rules, e.g: ***Principle 3 of the CLSB Code of Conduct:*** Generally is about acting in the best interests of the client. A costs lawyer must not accept client money save for disbursements and payment of your proper professional fees. There is no mention of the CLs handling client money in the CLSB Practising Rules. ***Credit reference to any authority cited on the principle, e.g:*** Principle 3.6 of the Costs Lawyer Code of Conduct and CLSB Practising Rules.	Up to 3 marks
Required: Students must include a discussion as to what client money is what proper professional fees are and what disbursements are, e.g: ***No Definition:*** There is no definition of client money within any rules set by the CLSB and therefore you must look to either CILEx or SRA rules for the definition. The SRA provide that "Client money" includes money held or received relating to regulated services delivered to a client and money held or received in respect of fees and any unpaid disbursements if held or received prior to delivery of a bill for the same. The CILEx account rules define client money as money beneficially owned by anyone other than the Authorised Entity. ***Credit reference to any authority cited on the definition of client money, e.g:*** Rule 2.1(a) of the SRA Account Rules 2019, Rule 2.1(b) of the SRA Account Rules 2019, Rule 2.1(c) of the SRA Account Rules 2019, Rule 2.1(d) of the SRA Account Rules 2019 and the CILEx Account Rules.	Up to 6 marks

Proper professional fees: Fees incurred on having complied with a client instruction, made up of payment for services provided; and disbursements paid on behalf of the client. ***Disbursements:*** A disbursement is a sum that a Costs Lawyer spends on behalf of their client including the VAT element. Disbursements include, but are not limited to, court fees, counsel's fees, travel costs, postal costs (if exceptional sum e.g. courier), photocopying costs (if exceptional sum). Disbursements do not include hourly rates, telephone calls made or received, faxes made or received, or general office overheads. ***Credit reference to any authority cited on professional fees and disbursements, e.g:*** CLSB Guidance Note Handling Client Money (Principle 3.6)	
Credit discussion on whether the principle is relevant when a costs lawyer works for an SRA regulated firm, e.g ***Relevance:*** The principles of the CLSB Code of Conduct are relevant to all authorised persons that are regulated by the CLSB. The CLSB are an approved regulator and must ensure they meet the 8 regulatory objectives set out in the Legal Services Act 2007. They do this by issuing rules, e.g the a code of conduct and practising rules. ***Credit reference to any authority cited on approved regulators and authorised persons, e.g:*** Section 18 of the Legal Services Act 2007, Section 20 of the Legal Services Act 2007 and Section 1 of the Legal Services Act 2007 ***Requesting payment in advance:*** A costs lawyer can request payment in advance of their services when a Costs Lawyer is employed (PAYE) by, or is a partner in, a firm authorised and regulated under the Legal Services Act 2007 (LSA). For example, a firm of solicitors regulated by the Solicitors Regulation Authority (SRA), in which case prevailing SRA rules and regulations apply. A costs lawyer cannot request payment in advance of their services when a Costs Lawyer is working for a firm not authorised and regulated under the LSA or is a sole practitioner. Interim billing arrangements can be agreed with a client to reduce financial exposure on payment for services provided and reimbursement for disbursements.	Up to 3 marks

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

Question 5:	You work in the Dispute Resolution Department for an SRA regulated firm, Harvest and Bunkers LLP. An Associate Solicitor at the firm, Barry Thomas, has requested your help on the file of Mr Trevor Robinson.

	Mr Robinson has been a client of Harvest and Bunkers LLP for over ten years. He owns a number of corner shops and has used the firm for conveyancing and some commercial advice. Mr Robinson had closed one of his shops for refurbishment but the work was delayed and as a result nobody had been into that shop for a month. Last week Mr Robinson went into the shop and discovered that judgment had been entered against him by Lecky Lectricians Ltd. Mr Robinson had not replied to the Claim Form and it was therefore ordered that he pay Lecky Lectricians Ltd £2,225, being the amount claimed, plus interest to the date of Judgment, and £240 for costs. Mr Robinson disputes the money is owed. Lecky Lectricians Ltd were due to undertake some work at two of the shops but never completed it. Your firm have been instructed to make an application to the Court to set aside the Default Judgment. Barry Thomas has asked that you write a letter of advice to Mr Robinson explaining what a Default Judgment is, how the Judgment has been obtained and upon what basis the Court may set aside a Default Judgment. Write the body of a letter to Mr Robinson providing advice on Default Judgments.

Total Marks Attainable	20

Fail	up to 9.9	This mark should be awarded to candidates whose papers fail to address any of the requirements of the question, or only touch on some of the more obvious points without dealing with them or addressing them adequately.
Pass	10+	An answer which addresses MOST of the following points: what a default judgment is, how a default judgment may be obtained, when permission may be needed to apply for a default judgment and the mandatory grounds for setting aside a default judgment. Candidates will demonstrate a good depth of knowledge of the subject (i.e. a good understanding of the procedure and impact of making an application) with good application and some analysis having regard to the facts, although candidates may demonstrate some areas of weakness.
Merit	12+	An answer which includes ALL the requirements for a Pass (as set out above) PLUS candidates will demonstrate a very good depth of knowledge of the subject (i.e. a very good understanding of the likely outcome in terms of costs) with very good application and some analysis having regard to the facts. Candidates are likely to observe that IN THIS SCENARIO it is likely the court will set aside the default judgment if it can be demonstrated the defendant has a real prospect of successfully defending the claim, or it appears to the court that there is some other good reason why the judgment should be set aside or varied, or the defendant should be allowed to defend the claim. Most views expressed by candidates should be supported by relevant authority and/or case law.
Distinction	14+	An answer which includes ALL the requirements for a Pass and Merit (as set out above) PLUS the candidates' answers should demonstrate a deep and detailed knowledge of law in this area and an ability to deal confidently with relevant principles. Work should be written to an exceptionally high standard taking into consideration that it is written in exam conditions.

Required: Candidate should explain what a Default Judgment is, how a Judgment may be obtained and upon what basis the Court may set aside a Default Judgment, e.g:	Up to 5 marks
A Default Judgment is: A default judgment is judgment without trial where a defendant has failed to file an acknowledgment of service; or has failed to file a defence. ***How a Judgment may be obtained:*** Defendant does not respond after 14 days, or acknowledges service within 14 days, but does not file and serve a defence within 28 days, the claimant can apply for 'judgment by default'. ***The basis the Court may set aside a Default Judgment:*** The mandatory grounds, upon which the court must set the judgment aside: D has filed an admission with request for time to pay, D had applied for summary judgment against the claimant, the claim was satisfied before judgment and D has complied with the rules. ***Credit reference to any authority cited on what a Default Judgment is, how a Judgment may be obtained and upon what basis the Court may set aside a Default Judgment, e.g:*** CPR 12, CPR 12.1 and CPR 13.2.	A pass must refer to CPR 12 and set out what a default judgment is.
Credit a discussion on making an application for Default Judgment under Part 12 Civil Procedure Rules (CPR), e.g ***Making an application:*** If a defendant fails to file an acknowledgment of service and does not within that period file a defence in accordance with Part 15 or serve or file an admission in accordance with Part 14, the claimant may obtain default judgment if Part 12 allows it. The claimant may obtain judgment in default of an acknowledgment of service only if at the date on which judgment is entered the defendant has not filed an acknowledgment of service or a defence to the claim (or any part of the claim); and the relevant time for doing so has expired. A default judgment is requested by completing and returning to the court Form N225 - Request for judgment and reply to admission. This form is also used in cases of admissions. Both on a request and on an application for default judgment the court must be satisfied that the particulars of claim have been served on the defendant (a certificate of service on the court file will be sufficient evidence), either the defendant has not filed an acknowledgment of service or has not filed a defence and that in either case the relevant period for doing so has expired, the defendant has not satisfied the claim, and the defendant has not returned an admission to the claimant or filed one with the court under rule. ***Credit reference to any authority cited on making an application, e.g:***	Up to 7 marks

CPR 10.2, CPR 12.3(1), CPR 6, Form N225 and CPR PD 12, para 4.1. ***When a DJ may not be obtained or when permission of the court may be needed:*** A claimant may not obtain a default judgment on a claim for delivery of goods subject to an agreement regulated by the Consumer Credit Act 1974; where he uses the procedure set out in Part 8 (alternative procedure for claims); or in any other case where a practice direction provides that the claimant may not obtain default judgment. May only be obtained by a claimant with the permission of the court (for which an application under CPR Part 23 will be required) in the following cases: D was served outside the jurisdiction, D is a child or protected party, C seeks costs (other than fixed costs), Tort claims between spouses or civil partners and C wants delivery of goods, not simply damages. ***Credit reference to any authority cited on when a DJ may not be obtained or when permission of the court may be needed, e.g:*** CPR 12.2 and CPR 12.10.	
Credit a discussion on setting aside a default judgment, e.g: ***Setting aside a DJ:*** The mandatory grounds, upon which the court must set the judgment aside: D has filed an admission with request for time to pay, D had applied for summary judgment against the claimant, the claim was satisfied before judgment and D has complied with the rules. In any other case, the court may set aside or vary a judgment entered under Part 12 if the defendant has a real prospect of successfully defending the claim or it appears to the court that there is some other good reason why the judgment should be set aside or varied or the defendant should be allowed to defend the claim. ***Credit reference to any authority cited on setting aside a DJ, e.g:*** CPR 13.2 and CPR 13.3. ***Promptness:*** A lack of promptness is a factor for the court to consider when deciding whether to set aside a default judgment. However a lack of promptness (and even a positive decision not to act promptly) does not prevent the court setting a judgment aside if the defendant can show a real prospect of successfully defending the claim. ***Credit reference to any authority cited on promptness in making an application, e.g:*** Page v Champion Financial Ltd [2014], Gentry v Miller [2016] and Stanley v London Borough Tower Hamlets [2020].	Up to 8 marks
Credit a discussion on the costs consequences of such an application, e.g: ***Legal representatives' charges:*** No sum in respect of legal representatives' charges will be allowed where the only claim is for a	Up to 4 marks

sum of money or goods not exceeding £25. Any appropriate court fee will be allowed in addition to the costs set out. ***Credit reference to any authority cited on legal representatives' charges, e.g:*** CPR 45.1(1), CPR 45.1 (2) (a)(i), CPR 45.1 (3) and CPR 45.1 (4). ***Fixed commencement costs:*** The claim form may include a claim for fixed commencement costs. The amount of fixed commencement costs in a claim will be calculated by reference to Table 1; and the amount claimed, or the value of the goods claimed if specified, in the claim form is to be used for determining the band in Table 1 that applies to the claim. The amounts shown in Table 4 are to be allowed in addition, if applicable. These are miscellaneous costs in respect of service. Where the claimant has claimed fixed commencement costs and judgment is entered the amount to be included in the judgment for the claimant's legal representative's charges is the total of the fixed commencement costs and the relevant amount shown in Table 2. For default judgment these will depend on whether the default was on an acknowledgment of service or default of a defence. These range between £22-£35. ***Credit reference to any authority cited on fixed commencement costs, e.g:*** CPR 45.1 (5), CPR 45.2, CPR 45.2 (1), CPR 45.2 (2) and CPR 45.4.	

Question 6:	You work in the Costs department of Cooper and Sylvester Law, an SRA regulated firm that specialises in clinical negligence claims. Your colleague, Amanda Cooper, has requested your help on the file of Miss Halka Kowalska. Miss Kowalska sought damages against Norwich NHS Trust for clinical negligence. Her claim was settled for £3,750. You drafted the bill of costs on the file, which totalled £21,370.22. This included the recoverable element of the ATE insurance premium of £4,500. The policy was a block-rated policy. The Respondent has produced a set of Points of Dispute. One of the points is a challenge to the ATE insurance premium. The point states that the Court must ensure that ATE premiums which are held to be recoverable in principle are assessed in proportionate and reasonable sums. The point also asserts that at the outset Miss Kowalska's prospects of losing the case were very low and suggested a reasonable and proportionate premium in this case is £370.

	Amanda Cooper has asked you to draft Replies to the Points of Dispute but initially has asked for your provisional advice on the recoverability of the ATE premium. Write the body of an email to Ms Cooper advising on the recoverability of ATE premium and in particular whether the premium may be reduced based on proportionality.

Total Marks Attainable	20

Fail	up to 9.9	This mark should be awarded to candidates whose papers fail to address any of the requirements of the question, or only touch on some of the more obvious points without dealing with them or addressing them adequately. An answer which makes little or no sense OR is so poorly written as to lack coherence OR the answer will only demonstrate an awareness of some of the more obvious issues and is likely to be poorly written.
Pass	10+	An answer which addresses MOST of the following points: Definitions and salient points in respect of ATE and premiums, recoverability pre and post LASPO and the exception to the general rule in respect of clinical negligence matters. Candidates will demonstrate a good depth of knowledge of the subject (i.e. a good understanding of the legislative framework around the recoverability of premiums) with good application and some analysis having regard to the facts, although candidates may demonstrate some areas of weakness.
Merit	12+	For a mark in this band, the answer will deal with ALL of the requirements required for a pass however, candidates will have produced responses that have more depth and more application and analysis, as appropriate. The answer should also address ALL of the following points: the applicability of the CPR to premiums i.e the assessment of premiums in proportionate and reasonable sums, the argument that there were comparable cheaper products on the market and the likelihood of the premium being reduced on assessment. The answer is also likely to include some discussion on the reasonableness of premiums. Candidates will demonstrate a very good depth of knowledge of the subject (i.e. a good understanding of the legislative framework around the recoverability of premiums) with good application and some analysis having regard to the facts, although candidates may demonstrate some areas of weakness.
Distinction	14+	An answer which includes ALL the requirements for a pass and merit (as set out above) PLUS the candidates' answers should demonstrate a deep and detailed knowledge of law in this area and an ability to deal confidently with relevant principles. Candidates will provide an excellent advice setting out the likelihood of the challenges succeeding. All views expressed by candidates should be supported by relevant authority and/or case law. Work should be written to an exceptionally high standard taking into consideration that it is written in exam conditions.

Fail = 0-9.9
Pass = 10+
Merit = 12+
Distinction = 14+

Indicative Content:	**Marks**
Required: Candidates must demonstrate knowledge of the legislative framework governing the recoverability of ATE premiums, e.g: ***The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO):*** Renders that ATE premiums are no longer recoverable from	Up to 4 marks

the paying party. The Act introduced a new section 58C of the Courts and Legal Services Act 1990 which prevents recovery of any premium for an after the event insurance policy. A costs order made in favour of a party to proceedings who has taken out a costs insurance policy may not include provision requiring the payment of an amount in respect of all or part of the premium of the policy, unless permitted under regulations made by the Lord Chancellor in clinical negligence cases permitting for the recovery of ATE premiums in relations to medical experts reports. The regulations provide that insurance premiums are recoverable where the insurance is against the risk of incurring experts fees re liability and causation in clinical negligence proceedings, the part of the policy recoverable relates to the experts reports, and the damages claimed are valued at £1000.00 or more. There are no other rules or practice directions to give guidance on the assessment and recoverability of premiums and it has been commented on by the C of A that this ought to be looked at by the Rules Committee. ***Credit reference to any authority cited on the legislative framework governing the recoverability of ATE premiums, e.g:*** Section 46(1) of the Legal Aid Sentencing and Punishment of Offenders Act 2012, Section 58C(1) of the Courts and Legal Services Act 1990, Section 58C(2) of the Courts and Legal Services Act 1990, Recovery of Costs Insurance Premiums in Clinical Negligence Proceedings (No 2) Regulations 2013 and Peterborough & Stamford Hospital NHS Trust v McMenemy [2017].	
Credit any discussion on the court's discretion, general challenges to premiums and reasonableness, e.g: ***Basis of Assessment and reasonableness:*** Court has discretion as to costs BUT emphasis on proportionality because of the standard basis of assessment (CPR 44.3(2) and the overriding objective). Where the amount of costs is to be assessed on the standard basis, the court will only allow costs which are proportionate to the matters in issue. Costs which are disproportionate in amount may be disallowed or reduced even if they were reasonably or necessarily incurred; and resolve any doubt which it may have as to whether costs were reasonably and proportionately incurred or were reasonable and proportionate in amount in favour of the paying party. Where the amount of costs is to be assessed on the indemnity basis, the court will resolve any doubt which it may have as to whether costs were reasonably incurred or were reasonable in amount in favour of the receiving party. Whatever basis: Reasonableness would always be considered. ***Credit reference to any authority cited on basis of assessment and reasonableness, e.g:*** Section 51 of the Senior Courts Act 1981, CPR 44.2, CPR 44.3(2) and CPR 44.3(3) ***There have been a number of challenges to ATE premiums:*** Not all sum paid was premium, the premium is too high compared to others available on the market and the formula used leads to disproportionate	Up to 7 marks

premium. Identifying which part of the premium relates to experts' reports may be difficult. Costs judges do not have the expertise to second guess the insurance market, still less to deconstruct a policy that is offered as a package into its constituent parts. ***Credit reference to any authority cited on challenges to premiums, e.g:*** Emily Noakes v Heart of England Foundation NHS Trust [2015] and Callery v Gray (No 2) [2002] ***Not unreasonable:*** A high limit of indemnity does not of itself indicate an unreasonable premium; block risk policies are not unreasonable; the premium to be allowed is the total premium paid, not the pure underwriting risk premium; assessment fees and profit costs of complying with the policy are recoverable; the receiving party need not have made the best choice, it just needs to be a reasonable choice when choosing the particular ATE insurer; it is reasonable to insure before sending the pre-action letter to the other side; it is reasonable to wait until the defendant's reaction to the claim is known; and if the premium is at or above the top of the range of other policies, the purchaser needs to explain why it chose this insurance—the court may disallow some elements of the premium if they are inflated or do not relate to insuring a costs liability. A premium will not be held to be unreasonable even when taking out ATE insurance to protect against a relatively low risk. ***Credit reference to any authority cited on what has been deemed to be not unreasonable, e.g:*** Allan Coleman v Medtronic Ltd [2016], Callery v Gray (No 1) [2001], Rogers v Merthyr Tydfil [2007], Peterborough & Stamford Hospital NHS Trust v McMenemy [2017].	
Credit any discussion on whether proportionality applies to ATE premiums, e.g: ***Applicability of Proportionality:*** Since LASPO there has been some uncertainty as to whether proportionality applies to ATE premiums and whether the CPR are engaged upon assessment. There has also been uncertainty around the test that applies. At first instance there were decisions suggesting that the new test would not apply. However, the Court of Appeal has held that ATE premiums taken out after 1 April 2013 should be dealt within under the post LASPO proportionality test applies. The CPR is engaged when assessing recoverability of ATE premiums and they are subject to the scrutiny of the Court. The Court require expert evidence if a premium is to be challenged. **Credit reference to any authority cited on whether proportionality applies to ATE premiums, e.g:** BNM v MGN Ltd [2016], King v Basildon & Thurrock Hospital NHS Trust [2016], Murrell v Cambridge University Hospital NHS Trust [2017], Mitchell v Gilling Smith [2017], BNM V MGN LTD [2017] and Peterborough & Stamford Hospital NHS Trust v McMenemy [2017].	Up to 5 marks

Credit any discussion on how proportionality should be applied to ATE premiums, e.g: ***The tests of proportionality:*** The pre LASPO Approach was to consider item by item then stand back, items disproportionate but necessary were recoverable. The post LASPO test states that costs which are disproportionate can be disallowed or reduced even where reasonably incurred. There are a list of factors to be taken into account when considering if costs are proportionate. Costs are proportionate if they bear a reasonable relationship to sums in issue, value of non-monetary relief, complexity of litigation, additional work generated by conduct, wider factors, vulnerability. **Credit reference to any authority cited on the tests of proportionality, e.g:** Lownds v Home Office [2002], CPR 44.3(2) and CPR 44.3(5) (a) to (f). ***Application of Proportionality:*** There has been uncertainty as to how the new test or proportionality should apply. However the Court of Appeal has now provided a degree of certainty. It Is a two stage test and once reasonableness has been considered the Court should remove all unavoidable costs before making any deduction to reach a proportionate figure. Unavoidable costs may include ATE premiums. The Court require expert evidence if a premium is to be challenged. Callery number 2 remains good law. If there are to be future challenges to premiums they should be run as test cases. **Credit reference to any authority cited on the application of proportionality, e.g:** BNM v MGN Ltd [2017], May v Wavell Group [2016], May v Wavell Group [2017], West and Demouilpied v Stockport NHS Foundation Trust [2020].	Up to 8 marks

Question 7:	You are working for a firm of Costs Lawyers in Derby, Edwards and Sullivans Legal Costs Services. You are a qualified Costs Lawyer. As part of your role, you are responsible for allocating new clients to members of the team who will then undertake the work on behalf of the client. You have recently been instructed by Mr Pascal Lopez who had acted in person during the substantive proceedings. Mr Lopez is now seeking professional advice in relation to the costs proceedings, he feels that instructing your firm will ease his stress and save him some time and money. You have a telephone conference with Mr Lopez to ascertain his instructions. During the discussion it became clear that Mr Lopez has very strong views, therefore you form the view that

	managing his expectations is going to require you to allocate his matter to a senior member of your team. Mr Lopez's opponent has a Final Costs Order against Mr Lopez and your firm is now instructed to conduct the Detailed Assessment on his behalf. It became apparent from your phone call with Mr Lopez that the substantive proceedings were protracted and that Mr Lopez feels that the court have conspired against him. At one point during the conversation, Mr Lopez even suggested the Judge at the final hearing was racist. Your view is that it is likely Mr Lopez is upset with the outcome of the hearing, that the decision was within the bounds of fairness and that Mr Lopez has provided little evidence to support his claim that the Judge was racist. Additionally, Mr Lopez's instructions on the bill of costs is that the costs are all completely unreasonable, he has told you that he wants your firm to raise an issue with every item in the bill and make lengthy disputes. You believe that progressing the case in the way Mr Lopez is suggesting may be an abuse of the Court process. You therefore wish to provide the team member who will be undertaking the work with a memo explaining the implications for a Costs Lawyer if they were to conduct the case in the way Mr Lopez is instructing. Write the body of a memo setting out the Costs Lawyers duty to the Court, the professional conduct rules that prohibit you from arguing unarguable points and the potential implications if you act on Mr Lopez's current instructions.
Total Marks Attainable Fail = 0-9.9 Pass = 10+ Merit = 12+ Distinction = 14+	20

Fail	up to 9.9	An answer which deals with the basic requirements of the question, but in dealing with those requirements only does so superficially and does not address, as a minimum, all the criteria expected of a pass grade (set out in full below). The answer will only demonstrate an awareness of some of the more obvious issues. The answer will be weak in its presentation of points and its application of the law to the facts.
Pass	10+	An answer which addresses MOST of the following points: An outline of what it means to be an authorised person, an explanation of the costs lawyers duty to the court, an explanation of what a reserved legal activity is and whether this work can be undertaken by non-qualified costs professionals. Candidates should identify the relevant issues in the case and deal with the circumstances in their advice.
Merit	12+	An answer which includes ALL the requirements for a Pass (as set out above) PLUS candidates will demonstrate a very good depth of knowledge of the subject (i.e. a very good understanding of authorised persons/reserved legal activities) with very good application and some analysis having regard to the facts. Most views

		expressed by candidates should be supported by relevant authority and/or case law.
Distinction	14+	An answer which includes ALL the requirements for a Pass (as set out above) PLUS candidates' answers should demonstrate a deep and detailed knowledge of law in this area and an ability to deal confidently with relevant principles. Work should be written to an exceptionally high standard with few, if any, grammatical errors or spelling mistakes etc.

Indicative Content	**Marks**
Required: Candidates must explain the legislative framework governing the regulation of lawyers and reserved legal activities, e.g: ***Regulation of lawyers:*** An authorised persons is a person, or company, who is authorised to undertake reserved legal activities by an approved regulator. An approved regulator is a body which is designated as an approved regulator by Schedule 4 of the LSA 07. ACL is the approved regulator of Costs Lawyers. A Memorandum of Understanding between ACL and the CLSB delegates the regulatory function to the CLSB. This is similar to the relationship between the SRA and Law Society, the SRA regulate solicitors and SRA regulated firms. Reserved legal activities include the exercise of rights of audience, the conduct of litigation and the administration of oaths. ***Credit reference to any authority cited on the regulation of lawyers, e.g:*** Section 18 of the Legal Services Act 2007, Section 20 of the Legal Services Act 2007, Section 20(5) of the Legal Services Act 2007, Schedule 4 of the Legal Services Act 2007, Section 12 of the Legal Services Act 2007, Sch 2 of the Legal Services Act 2007. ***Reserved legal activities:*** Any question of entitlement to undertake reserved legal activities is determined solely in accordance with the LSA 07. A person is entitled to carry on a reserved legal activity where that person is authorised in relation to the activity in question. If a person is not authorised, they may still be entitled to carry out a reserved legal activity if they are an "exempt person" in relation to the activity. Costs Lawyers must adhere to CLSB code of Conduct. Breach will result in disciplinary proceedings by CLSB. An individual who is not authorised by the CLSB, but who is a manager or employee of an authorised person, is also considered a regulated person under the LSA and must comply with all relevant regulatory arrangements. ***Credit reference to any authority cited on undertaking reserved legal activities, e.g:*** Section 13(1) of the Legal Services Act 2007, Section 13(2)(a) of the Legal Services Act 2007, Section 13(2)(b) of the Legal Services Act 2007, Section 176(1) of the LSA 2007, Section 176(2)(b) of the LSA 2007.	Up to 8 marks An explanation should be given as to what it means to be an authorised person
Credit discussion of the costs lawyer's duty to the court, e.g: ***Costs Lawyer's duty to the court:*** A regulated costs lawyer must comply with your duty to the court in the administration of justice. Costs Lawyers must at all times act within the law and must not knowingly or recklessly either mislead the court or allow the court to be misled. Costs Lawyers	Up to 6 Marks

must comply with any court order which places an obligation on them and they must not be in contempt of court. Costs Lawyers must advise clients to comply with court orders made against them. Costs Lawyers must act in the best interests of your client. They must act at all times to ensure the client's interest is paramount except where this conflicts with your duties to the court or where otherwise permitted by law. You must decline to act if it would not be in the client's best interests or if that client's interests conflict directly with your own or with those of another client. ***Credit reference to any authority cited on the Costs Lawyer's duty to the court, e.g:*** CLSB Code of Conduct Principle 2, CLSB Code of Conduct Principle 2.1, CLSB Code of Conduct Principle 2.2, CLSB Code of Conduct Principle 2.3, CLSB Code of Conduct Principle 2.4, CLSB Code of Conduct Principle 3 and CLSB Code of Conduct Principle 3.1. ***Advocate's duty to the court:*** It is the duty of an advocate to draw the judge's attention to authorities that are in point, even if they are adverse to that advocate's case. If a point is not properly arguable, it should not be argued. ***Credit reference to any authority cited on the advocates's duty to the court, e.g:*** Copeland v Smith [2002] and Buxton v Mills-Owens [2010].	
Credit discussion on the consequence of a costs lawyer that breaches the applicable professional conduct rules, e.g: ***The CLSB Practising Rules:*** These Rules govern the practice of Costs Lawyers and the issue and revocation of practising certificates by the CLSB. No person shall be entitled to practise as a Costs Lawyer unless they have qualified as a Costs Lawyer in accordance with the Training Rules, they have a current Practising Certificate which has been issued in accordance with these Rules and which is not suspended and they comply with CPD requirements set out in the CPD Rules. An applicant or Costs Lawyer must disclose certain information when making an application for a Practising Certificate or throughout the lifetime of a Practising Certificate. This includes criminal convictions. A Practising Certificate may be revoked by the CLSB. Costs Lawyers must ensure that they have professional indemnity insurance. ***Credit reference to any authority cited on the CLSB Practising Rules, e.g:*** Rule 1 of the CLSB Practising Rules, Rule 4 of the CLSB Practising Rules, Rule 8 of the CLSB Practising Rules and Rule 10 of the CLSB Practising Rules. ***A Practising Certificate may be revoked by the CLSB:*** If a Costs Lawyer is subject to an order suspending their Practising Certificate, they will not be able to practise as a Costs Lawyer for the period of the suspension. If the Practising Certificate is still current when the suspension ends, the Practising Certificate will remain valid. If the Practising Certificate has	Up to 4 Marks

expired during the period of the suspension, the Costs Lawyer must apply for a new Practising Certificate. ***Credit reference to any relevant authority cited, e.g:*** Rule 8.1 of the CLSB Practising Rules, Rule 8.2 of the CLSB Practising Rules and the CLSB Disciplinary Rules and Procedures.	
Credit discussion on the liability of an advocate for example in negligence or wasted costs orders, e.g: ***Negligence:*** The fact is that the advocate, like other professional men, undertaking a duty to his client to conduct his case, subject to the rules and ethics of his profession, with proper skill and care. The principle that an advocate is liable to his client for professional negligence should not stifle the manner in which they conduct litigation and advise their clients. This might lead to defensive advocacy, where barristers would hedge their opinions with qualifications and be reluctant to give clients the advice which they require in their best interests. ***Credit reference to any relevant authority cited on negligence, e.g:*** Rondel v Worsley [1967], Arthur J S Hall & Co v Simmons [2007] and Moy v Pettmann Smith (A Firm) & Anor [2005]. ***Wasted costs:*** The court shall have full power to determine by whom and to what extent the costs are to be paid. The court may disallow or order the legal or other representative concerned to meet, the whole of any wasted costs or such part of them as may be determined in accordance with rules of court. Where the court orders a legal representative to pay wasted costs it must inform an approved regulator or the Director of Legal Aid Casework as it considers appropriate. ***Credit reference to any relevant authority cited on wasted costs, e.g:*** Section 51(3) of the Senior Courts Act 1981, Section 51(6) of the Senior Courts Act 1981 and Section 51(7A) of the Senior Courts Act 1981 ***Making the Order:*** The court will give the legal representative a reasonable opportunity to make written submissions or, if the legal representative prefers, to attend a hearing before it makes such an order. When the court makes a wasted costs order, it will specify the amount to be disallowed or paid or direct a costs judge or a district judge to decide the amount of costs to be disallowed or paid. ***Credit reference to any relevant authority cited on making an order, e.g:*** CPR 46.8(1), CPR 46.8(2), CPR 46.8(3)(a) and CPR 46.8(3)(b).	Up to 6 Marks To achieve a distinction candidates should demonstrate a sound ability to apply the law to the facts of the scenarios presented.

<table>
<tr><td>Question 8:</td><td colspan="3">You work for Derek and Dobson Costs Consultants, a reputable firm of costs professionals based in Cardiff. The firm receive instructions from all over England and Wales.

Derek and Dobson Costs Consultants are very proactive in training and development and support all staff members in completing their Cost Lawyer qualification. Therefore, all members of staff are either currently regulated by the Costs Lawyers Standards Board or are undertaking the qualification.

You are a qualified Costs Lawyer and as part of your role you liaise with new clients. Next week you have a meeting with a prospective new client, a large firm that is regulated by the Solicitors Regulatory Authority. At that meeting you will need to present to them on the benefits of using your firm to complete their budget, billing and assessment work. You know that the firm are particularly interested in finding a company that is prepared to attend costs and directions hearings on their behalf.

Having discussed the presentation with your colleague you have agreed to put together some materials on ethics and professional standards which outline the reserved legal activities a Costs Lawyer can undertake and the principles of the CLSB Code of Conduct. You have decided to pay particular regard to the principles which apply when preparing budgets, bills of costs and attending hearings. The purpose of your presentation is to persuade the prospective client how it may benefit from using a firm of regulated costs professionals.

Prepare the body of the presentation materials.</td></tr>
<tr><td colspan="3">Total Marks Attainable

Fail = 0-9.9
Pass = 10+
Merit = 12+
Distinction = 14+</td><td>20</td></tr>
<tr><td>Fail</td><td>up to 9.9</td><td colspan="2">An answer which deals with the basic requirements of the question, but in dealing with those requirements only does so superficially and does not address, as a minimum, all the criteria expected of a pass grade (set out in full below). The answer will only demonstrate an awareness of some of the more obvious issues. The answer will be weak in its presentation of points and its application of the law to the facts.</td></tr>
<tr><td>Pass</td><td>10+</td><td colspan="2">An answer which addresses MOST of the following points: An outline of what it means to be an authorised person, an explanation of the costs lawyers duty to the court, an explanation of the professional conduct rules, an explanation of what a reserved legal activity is and what work can be undertaken by non-qualified costs</td></tr>
</table>

		professionals. Candidates should identify the relevant issues in the case and deal with the circumstances in their advice.
Merit	12+	An answer which includes ALL the requirements for a Pass (as set out above) PLUS candidates will demonstrate a very good depth of knowledge of the subject (i.e. a very good understanding of authorised persons/reserved legal activities) with very good application and some analysis having regard to the facts. Most views expressed by candidates should be supported by relevant authority and/or case law.
Distinction	14+	An answer which includes ALL the requirements for a Pass (as set out above) PLUS candidates' answers should demonstrate a deep and detailed knowledge of law in this area and an ability to deal confidently with relevant principles. Work should be written to an exceptionally high standard with few, if any, grammatical errors or spelling mistakes etc.

Indicative Content	**Marks**
Required: Candidates must explain the legislative framework governing the regulation of lawyers and reserved legal activities, e.g: ***Regulation of lawyers:*** An authorised persons is a person, or company, who is authorised to undertake reserved legal activities by an approved regulator. An approved regulator is a body which is designated as an approved regulator by Schedule 4 of the LSA 07. ACL is the approved regulator of Costs Lawyers. A Memorandum of Understanding between ACL and the CLSB delegates the regulatory function to the CLSB. This is similar to the relationship between the SRA and Law Society, the SRA regulate solicitors and SRA regulated firms. Reserved legal activities include the exercise of rights of audience, the conduct of litigation and the administration of oaths. ***Credit reference to any authority cited on the regulation of lawyers, e.g:*** Section 18 of the Legal Services Act 2007, Section 20 of the Legal Services Act 2007, Section 20(5) of the Legal Services Act 2007, Schedule 4 of the Legal Services Act 2007, Section 12 of the Legal Services Act 2007, Sch 2 of the Legal Services Act 2007. ***Reserved legal activities:*** Any question of entitlement to undertake reserved legal activities is determined solely in accordance with the LSA 07. A person is entitled to carry on a reserved legal activity where that person is authorised in relation to the activity in question. If a person is not authorised, they may still be entitled to carry out a reserved legal activity if they are an "exempt person" in relation to the activity. Costs Lawyers must adhere to CLSB code of Conduct. Breach will result in disciplinary proceedings by CLSB. An individual who is not authorised by the CLSB, but who is a manager or employee of an authorised person, is also considered a regulated person under the LSA and must comply with all relevant regulatory arrangements. ***Credit reference to any authority cited on undertaking reserved legal activities, e.g:*** Section 13(1) of the Legal Services Act 2007, Section 13(2)(a) of the Legal Services Act 2007, Section 13(2)(b) of the Legal	Up to 8 marks An explanation should be given as to what it means to be an authorised person.

Services Act 2007, Section 176(1) of the LSA 2007, Section 176(2)(b) of the LSA 2007.	
Credit discussion of the costs lawyer's duty to the court, e.g: ***Costs Lawyer's duty to the court:*** A regulated costs lawyer must comply with your duty to the court in the administration of justice. Costs Lawyers must at all times act within the law and must not knowingly or recklessly either mislead the court or allow the court to be misled. Costs Lawyers must comply with any court order which places an obligation on them and they must not be in contempt of court. Costs Lawyers must advise clients to comply with court orders made against them. Costs Lawyers must act in the best interests of your client. They must act at all times to ensure the client's interest is paramount except where this conflicts with your duties to the court or where otherwise permitted by law. You must decline to act if it would not be in the client's best interests or if that client's interests conflict directly with your own or with those of another client. ***Credit reference to any authority cited on the Costs Lawyer's duty to the court, e.g:*** CLSB Code of Conduct Principle 2, CLSB Code of Conduct Principle 2.1, CLSB Code of Conduct Principle 2.2, CLSB Code of Conduct Principle 2.3, CLSB Code of Conduct Principle 2.4, CLSB Code of Conduct Principle 3 and CLSB Code of Conduct Principle 3.1. ***Advocate's duty to the court:*** It is the duty of an advocate to draw the judge's attention to authorities that are in point, even if they are adverse to that advocate's case. If a point is not properly arguable, it should not be argued. ***Credit reference to any authority cited on the advocates's duty to the court, e.g:*** Copeland v Smith [2002] and Buxton v Mills-Owens [2010].	Up to 8 marks
Credit a discussion on the CLSB Practising Rules, e.g: ***The CLSB Practising Rules:*** These Rules govern the practice of Costs Lawyers and the issue and revocation of practising certificates by the CLSB. No person shall be entitled to practise as a Costs Lawyer unless they have qualified as a Costs Lawyer in accordance with the Training Rules, they have a current Practising Certificate which has been issued in accordance with these Rules and which is not suspended and they comply with CPD requirements set out in the CPD Rules. An applicant or Costs Lawyer must disclose certain information when making an application for a Practising Certificate or throughout the lifetime of a Practising Certificate. This includes criminal convictions. A Practising Certificate may be revoked by the CLSB. Costs Lawyers must ensure that they have professional indemnity insurance. ***Credit reference to any authority cited on the CLSB Practising Rules, e.g:*** Rule 1 of the CLSB Practising Rules, Rule 4 of the CLSB Practising Rules,	Up to 8 Marks

Rule 8 of the CLSB Practising Rules and Rule 10 of the CLSB Practising Rules.	

Question 9:	You are a Costs Lawyer and head the Costs and Accounts department at a high street firm in Chelmsford, Munslow and Harper LLP. You work alongside Morgan Thomas, who is the firm's Compliance Officer for Finance and Administration. Munslow and Harper LLP specialise in residential property and due to the location of the firm attract quite a lot of instructions from people in London who are trying to avoid the more expensive legal fees of city lawyers. The firm now wish to expand their target market and are due to run a marketing campaign in Birmingham, Liverpool, Manchester and Nottingham in the hope that they can have a nationwide presence. As a result of the plan for growth, Munslow and Harper LLP are scheduled to run a recruitment drive over the next three months with the expectation that fee earning staff in the residential property department will increase by 15%. Morgan wishes for all new staff to undertake mandatory training on due diligence including identity checks and checks of source(s) of any funds the firm receives. Therefore, he has approached you to write an outline for the training that covers the definition of money laundering, the risks the firm faces and the associated offences. Provide the body of the guidance note for Morgan on the particular aspects he wishes to cover.
Total Marks Attainable	20

Fail	up to 9.9	An answer which deals with the basic requirements of the question, but in dealing with only does so superficially and does not address, as a minimum, all the criteria expected of a pass grade (set out in full below). The answer will only demonstrate an awareness of some of the more obvious issues. The answer will be weak in its presentation of points and its application of the law to the facts. There will be little evidence that candidates have any understanding of the regulatory framework governing client accounts and money laundering.
Pass	10+	An answer which addresses MOST of the following points: A definition of money laundering, an explanation of what money laundering is, identification of the relevant legislation/regulations, an outline of the due diligence requirements and the principle offences. Some key authority should be included, but this may not be specifically applied or only superficially.
Merit	12+	An answer which includes ALL the requirements for a Pass (as set out above) PLUS candidates will demonstrate a very good depth of knowledge of the subject (i.e. a very good understanding of the operation of the money laundering regulations) with very good application to the scenario, i.e recognition that the

		firm must be SRA regulated and/or an explanation of the relevant governance that a firm must have in place. There will be some analysis having regard to the facts. Most views expressed by candidates should be supported by relevant authority and/or case law.
Distinction	14+	An answer which includes ALL the requirements for a Pass (as set out above) PLUS the candidates' answers should demonstrate a deep and detailed knowledge of law in this area and an ability to deal confidently with relevant principles. All views expressed by candidates should be supported by relevant authority and/or case law throughout. Candidates should be able to show critical assessment and capacity for independent thought on the topics. Work should be written to an exceptionally high standard with few, if any, grammatical errors or spelling mistakes etc.

Fail = 0-9.9
Pass = 10+
Merit = 12+
Distinction = 14+

Indicative Content	**Marks**
Required: Candidates must explain what money laundering is and the legislative framework, e.g: ***Money Laundering:*** Money laundering is "the process by which criminal proceeds are sanitised to disguise their illicit origins". The SRA require individuals and firms respectively to make sure they keep up to date with, and remain aware of, their responsibilities under any new legislation as and when it is introduced. This includes the Money Laundering, Terrorist Financing and Transfer of Funds. These regulations apply to certain categories of persons acting in the course of business carried on in the UK. These regulations apply to independent legal professionals participating in certain financial or real property transactions. ***Credit refence to any authority cited on money laundering and the applicability of the legislative framework, e.g:*** Legal Guidance, Proceeds Of Crime Act 2002 Part 7 - Money Laundering Offences, Paragraph 7.1 of the SRA Code of Conduct for Solicitors, RELs and RFLs, and paragraph 3.1 of the SRA Code of Conduct for Firms, Regulation 8 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 and Regulation 12(1) of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017.	Up to 2 marks To achieve a pass, an explanation should be given as to what money laundering is and the governing legislation
Credit a discussion on the governance, systems and controls a firm should have in place, e.g: ***Systems and controls:*** Firms must take appropriate steps to identify and assess the risks of money laundering and terrorist financing to which its business is subject. They must also keep records of any identified risks. Firms must establish and maintain policies, controls and procedures to mitigate and manage effectively the risks of money laundering and terrorist financing identified in any risk assessment	Up to 4 marks

undertaken by the relevant person. They must review any such policies and maintain records of them. Where appropriate with regard to the size and nature of its business, firms must appoint one individual who is a member of the board of directors (or if there is no board, of its equivalent management body) or of its senior management as the officer responsible for the relevant person's compliance with the Regulations (MLCO). Firms should also appoint a nominated officer, usually referred to as the Money Laundering Reporting Officer (MLRO), to receive internal reports of suspicious activity, and make Suspicious Activity Reports (SARs) to the National Crime Agency where necessary. Firms must provide staff with appropriate training on money laundering and terrorist financing, and keep a record of the training staff have undertaken. This now includes an obligation to make staff aware of the law on data protection, insofar as it is relevant to the implementation of the regulations. ***Credit refence to any authority cited on systems and controls, e.g:*** Regulation 18 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, Regulation 19 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, Regulation 21 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, Regulation 24 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017.	
Credit a discussion on customer due diligence, e.g: ***Due diligence:*** Firms must apply customer due diligence measures if they establish a business relationship; carry out an occasional transaction that amounts to a transfer of funds exceeding 1,000 euros; suspects money laundering or terrorist financing; or doubts the veracity or adequacy of documents or information previously obtained for the purposes of identification or verification. A firm must identify the customer unless the identity of that customer, verify the customer's identity and assess the purpose and intended nature of the business relationship or occasional transaction. Firms may rely on another person (another regulated individual) who is subject to the MLR or equivalent to carry out CDD, but they remain liable for any failings. To rely on a third party, firms must enter into a written agreement with the third party under which they agree to provide copies of any identification and verification data on the customer or its beneficial owner within two working days, and to keep records in accordance with MLRs. ***Credit refence to any authority cited on due diligence, e.g:*** Regulation 27 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, Regulation 28 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 and Regulation 39 of the	Up to 10 marks

Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017. ***Enhanced due diligence:*** Under the regulations, enhanced due diligence measures must include, as a minimum, examining the background and purpose of the transaction and increasing the monitoring of the business relationship. The regulations set out a list of circumstances in which enhanced due diligence measures must be applied, which includes any transaction or business relationship involving a person established in a 'high risk third country', any transaction or business relationship involving a 'politically-exposed person', or a family member or known associate of a politically-exposed person and any other situation that presents a higher risk of money laundering or terrorist financing. ***Credit refence to any authority cited on enhanced due diligence, e.g:*** Regulation 33 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 and Regulation 33(1) of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017. ***Simplified due diligence:*** Simplified due diligence is permitted where a firm determines, after individual risk assessment of the client, that the business relationship or transaction presents a low risk of money laundering or terrorist financing, taking into account their risk assessment. ***Credit refence to any authority cited on simplified due diligence, e.g:*** Regulation 37 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017.	
Candidates may discuss the principal money laundering offences, e.g: ***Offences:*** A person will be liable of an offence if he conceals, disguise, converts, transfers or removes criminal property. Concealing or disguising criminal property includes concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it. A person commits an offence if he enters into, or becomes concerned in, an arrangement which he knows or suspects facilitates the acquisition, retention, use or control of criminal property by or on behalf of another person. If a person acquires, uses or possesses property for which he has not given adequate consideration, he may be liable of an offence. It is an offence of participating in an organised crime group into English law. It has the potential to seriously widen the scope of criminal liability for lawyers and other professionals working in the non-regulated sector. It is an offence to be involved in fundraising if you have knowledge or reasonable cause to suspect that the money or other property raised might be used for terrorist purposes. It is an offence to use or possess	Up to 8 marks

money or other property for terrorist purposes, including when you have reasonable cause to suspect the money or property might be used for these purposes. It is an offence to enter into or become concerned in an arrangement facilitating the retention or control of terrorist property by, or on behalf of, another person (unless you did not know, and had no reasonable cause to suspect, that the arrangement related to terrorist property). ***Who may investigate and prosecute offences:*** Money laundering offences are principally investigated by the police, the National Crime Agency (NCA) or HM Revenue & Customs (HMRC), or, if the offence has been committed by an entity in the City of London, the Financial Investigations Unit of the City of London Police. The Crown Prosecution Service usually conducts criminal proceedings. The Serious Fraud Office investigates and prosecutes matters involving serious or complex fraud or corruption. Where the allegations are linked to financial firms, the matter may be investigated or prosecuted by the Financial Conduct Authority (FCA). ***Credit refence to any authority cited on the offences, e.g:*** Section 327 of the Proceeds of Crime Act 2002, Section 328 of the Proceeds of Crime Act 2002, Section 329 of the Proceeds of Crime Act 2002, Section 45 of the Serious Crime Act 2015, Section 15 of the Terrorism Act 2002, Section 16 of the Terrorism Act 2002 and Section 18 of the Terrorism Act 2002.	