

CHIEF EXAMINER COMMENTS WITH SUGGESTED POINTS FOR RESPONSES

LEVEL 6 - UNIT 17 – CONVEYANCING

JUNE 2022

Note to Candidates and Learning Centre Tutors:

The purpose of the suggested points for responses is to provide candidates and learning centre tutors with guidance as to the key points candidates should have included in their answers to the June 2022 examinations. The suggested points for responses sets out a response that a good (merit/distinction) candidate would have provided. Candidates will have received credit, where applicable, for other points not addressed by the marking scheme.

Candidates and learning centre tutors should review the suggested points for responses in conjunction with the question papers and the Chief Examiners' **comments contained within this report**, which provide feedback on candidate performance in the examination.

CHIEF EXAMINER COMMENTS

The stronger performing candidates exhibited similar characteristics, in that they possessed both good knowledge and understanding of the relevant principles and procedures of conveyancing, coupled with the ability to offer practical and pragmatic advice in relation to the issues with which they were presented. Weaker candidates were found wanting in one or more of these respects. Better candidates had clearly made good use of the opportunity to consider the case study materials in advance of the exam.

Weaker candidates tended to produce answers which were generalised and discursive, with occasional suggestions of sheer guesswork.

Generally, in this cohort, there was a high number of candidates who dealt with conveyancing procedures in a satisfactory manner, although a minority of candidates struggled with the correct procedure and knowledge. It is always advisable to ensure that candidates have a working knowledge of time limits for searches, and post completion matters as these matters are essential in practice and in examination questions.

CANDIDATE PERFORMANCE FOR EACH QUESTION

Question 1(a)

On the whole this question was well answered. Most, but not all candidates referred to Money Laundering Regulations 2017 and Proceeds of Crime Act 2002, (the mark scheme did require candidates to cite both statutes for a full mark here) and the necessity of due diligence checks in these particular circumstances to establish photographic ID and utility bills to establish address. In the latter case the clients had just returned from the Caribbean so a risk based approach should be applied-. other proof of address such as tenancy agreement with their names as Landlords would be acceptable or credit card or bank statements. Might be prudent to refer to firm's MLRO.

(b)

This was quite well answered and virtually all candidates recognising that this was a gifted deposit and a gifted deposit form should be obtained. More able candidates recognised the fact that the funds were coming from the Isle of Man and the risks involved. Many picked up on the Nationwide's own requirements and the need for further ID and Bankruptcy search. A few detailed the circumstances in which Dorothy could obtain a possible implied trust or overriding interest.

With regard to the extras most dealt with this adequately mentioning a Disclose of Incentives form. With regard to the intention not to have a survey, the Nationwide will carry out their own valuation whatever the clients' decision with regard to a survey. This part was well answered.

(c)

Most candidates explained the difference between the 10% Deposit being held as stakeholders or Agent for the Seller where the developer would probably use the deposit to assist cash flow and fit out the bungalow. More able candidates referred to the standard conditions of sale.

A good proportion of candidates recognised that although normally this would be unacceptable particularly if a deposit was coming from sale, but here: A- Dorothy could pay the deposit independently and B the NHBC gives protection for a deposit if the Builders were to go Bankrupt. Better candidates gave the value of this.

Question 2(a)

Unfortunately, some candidates thought that there was a mistake in the question, and it should have referred to the entry in the Property Register which concerned mines and minerals. This was a genuine and correct question and related to the fact that the property appeared to have increased in value by 66% over five years. The danger was that if there had been an undervalue and subsequent Bankruptcy the Insolvency Act would apply. Action should be taken and a declaration of solvency and indemnity insurance would be required by the buyers' lawyers. Those candidates who did answer this question answered it well in the main.



(b)

Most candidates spotted that this was an anti-fraud device, a restriction in Form LL. It was put on as a precaution because the clients were spending time in the Caribbean and were renting out their property. So now it can be released, and the better candidates detailed how this is done in accordance with Land Registry rules.

(c)

This was quite well answered by most candidates who detailed the difference between a joint tenancy and tenancy in common in the beneficial estate. Some candidates used the question as an excuse to write everything they knew about co-ownership, but the question required candidates to be selective, to analyse what would be better, bearing in mind that there are children from an earlier relationship, and the fact that the clients have held their sale property as joint tenants. Although the clients should be fully informed, it is ultimately the client's decision and better candidates recognised this.

Question 3(a)

Most candidates correctly advised their clients that the Conveyance dated 25th August 1946 imposed negative restrictive covenants that the property could not be used for other more than one single dwellinghouse and the implications here. The sellers also required new covenants to be imposed. This could interfere with the clients' plans particularly on the part of Wendy to sell paintings and hold art classes. Candidates then had to advise the best course of action for the clients. Most candidates dealt with this reasonably well. Some candidates went off on a tangent and considered planning law which was not required in this context.

(b)

This question was an exercise in drafting "requisitions on title" and also explaining why they had been raised. The idea of requisitions is that they should arise from the title rather than be any other matters which are enquiries. Better candidates realised that and the main requisitions requested confirmation that the Charge in favour of Peterborough Building Society will be released from the part of the title being sold. A DS 3 would be required. A worrying number of candidates did not spot this. The other main requisition was the fact that Ernest Grundy was still on the title and a death certificate was required. Some candidates discussed the fact that a trustee maybe required to join in, but better candidates realised that there were already two trustees to whom purchase monies were paid so overreaching provisions were catered for. Well done to these candidates. It was also advisable to raise a requisition as to whether the sellers had indemnity insurance as there was a clear breach of the 1946 Conveyance in that the bungalow had been built. Better candidates spotted this.

Question 3(c)

Most candidates were able to give a reasonable explanation of the protection given by the NHBC Buildmark Warranty. Better candidates gave more detail as to how the warranty works including the fact that the deposit will be protected in the event of the Builders going Bankrupt.



With regard to contingency arrangements in the event of the sale and purchase, most candidates gave a reasonable and workable explanation as to whether completion of the sale and purchase could be completed contemporaneously.

Most candidates correctly presented the answer in the form of an email to the clients.

Question 4(a)

Quite a number of candidates worryingly failed to recognise that this should have been on form TP1 (transfer of part) rather than TR1 (transfer of whole.) Most candidates spotted that the address had been incorrectly stated – twice - that the spelling of the Transferees' names were incorrect, and that Ernest Grundy should not be included in the Transfer deed as he is deceased.

(b) (i)

Most candidates realised that there should be an indemnity clause in respect of the covenants contained in the Conveyance dated 25th August 1946 at least on the face of it. A separate covenant was also required in respect of the fence (positive) and in respect of any proposed extension. Better candidates offered some wording for the covenants, and here the terminology at this level is all important. As the covenants will be in the Transfer deed the correct wording is Transferor and Transferee and not seller and buyer. Also, any covenants should be given to the Transferors and successors in title.

(ii)

Most candidates recognised the rights which the Transferees will require which was to have access over the drive with or without vehicles subject to a proportionate contribution towards its upkeep; and connection into drains pipes sewers cables etc., for provision of services. Again, better candidates offered some wording, and again the comment as to using the correct terminology – Transferor and Transferees and referring to successors in title applies.

Question 4(c)

Most candidates correctly described that an OS2 will be required rather than an OS1 – as this is a Transfer or Part. The better candidates correctly gave the procedure that they would require a plan – or a date the plan was registered at the Land Registry. They correctly identified the search from date, and that the search would be made on behalf of Nationwide – which would protect the buyers as well – and that the search would be valid for 30 working days. Some candidates stated that a K 16 would be made- this was correct but not required for the question.



SUGGESTED POINTS FOR RESPONSE

LEVEL 6 - UNIT 17 - CONVEYANCING

Question Number	Suggested Points for Responses	Marks (Max)
1(a)	<p>Responses should include:</p> <ul style="list-style-type: none"> • Must apply anti-money laundering regulations: Money Laundering Regulations 2017 and Proceeds of Crime Act 2002 • Protocol requires compliance with Money Laundering Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 • Must establish identity through photographic evidence - up to date passport or driving licence • Must establish current address by producing utility bill less than three months old or council tax statement not more than a year old • In the present case, our clients may not be able to produce proof of address in the form of utility bills or a council tax statement. However, it is permissible to adopt a risk-based approach to CDD to determine the extent and quality of information required and the steps to be taken to meet the requirements • This should be discussed internally with the firm’s MLRO and/or compliance officer. Other proof of address (eg a tenancy agreement in the clients’ names as landlords which gives their address as the property) might be acceptable. Any departure from ‘usual’ practice, and the reason(s) for it (including the risk analysis which underpins it), should be recorded in writing for SRA purposes <p>Responses could include:</p> <p>K16 Bankruptcy search against full names of the buyers.</p>	7
1(b)	<p>Responses should include:</p> <p>Gifted deposit</p> <p>The gift being provided by Dorothy Kearns is a gifted deposit, about which the clients’ lender (Nationwide) has specific requirements. Given that the deposit: (i) exceeds Nationwide’s threshold of £10,000, and (ii) is being given less than 12 months before the mortgage advance, the clients will need to complete a Gifted Deposit Form. They will also need to supply a bank statement showing where the deposit is currently being held.</p> <p>Kempstons should also carry out AML/ID online checks in relation to Dorothy Kearns, as well as a K16 bankruptcy search.</p>	11



	<p>Contents</p> <p>The Society will require signed copy of the Disclosure of Incentives form to check the loan to value requirement.</p> <p>Survey</p> <p>The Society may also require a valuation to be commissioned.</p> <p>Responses could include: If the deposit is being held overseas, there will be further requirements that need to be satisfied.</p>	
1(c)	<p>Responses should include:</p> <p>The Standard Conditions of Sale (Fifth Edition – 2018 Revision) (SCS) provide that the deposit should be paid to the Sellers’ Lawyers as stakeholder and be held in their client account: SCS 2.2.5 and SCS 2.2.6. Builders or developers often require that the deposit be paid to their lawyers to hold as agent for the seller, typically to help their cashflow/provide funds for ongoing construction works. The danger for a buyer is that the deposit may then be released to the seller, only to be lost if the seller subsequently becomes insolvent. However, in the present case NHBC Buildmark warranty cover is being offered – this means that a prospective buyer is insured in relation to their 10% deposit up to a maximum of £100,000), so our client’s deposit would be protected if the cover is incepted pre-exchange (for which proof would be required). On that basis, clause 3 of the contract is acceptable.</p> <p>Responses could include:</p> <p>Given that Plot 1, Seaside House is a one-off build, the Sellers might in any event be persuaded to accept that the deposit should be held ‘as stakeholder’.</p>	6
Question 1 Total: 24 marks		
2(a)	<p>Responses should include:</p> <p>Entry number 2 in the Proprietorship Register reveals that 23 Manor Drive has apparently increased in value by £200,000 (or 66%) over the period between 2017 and 2022. If: (i) the price currently proposed to be paid by our clients is genuine, and (ii) there is no good reason which explains the apparent uplift in value since 2017, it raises the possibility that the sale in 2017 was a ‘transaction at an undervalue’ within the meaning of Insolvency Act 1986, s 339. If the seller to our clients were adjudged bankrupt within the 5-year period immediately prior to the date of the sale to our clients (and, therefore, the date of mortgage in favour of Nationwide), it is possible that the trustee in bankruptcy might apply to have the sale (and, therefore, the mortgage) set aside, causing the</p>	9



	Nationwide to lose its security for the mortgage advance. It is likely that the Buyers' Lawyers will raise a requisition about this and will also require our clients to obtain indemnity insurance at our clients' expense. These actions on their part are required under paragraph 5.16.3 of the UK Finance Mortgage Lenders' Handbook.	
2(b)	<p>Responses should include:</p> <p>A restriction in Form LL is an 'anti-fraud' device: it protects absentee registered proprietors from being impersonated by fraudsters by requiring a conveyancer to certify that they are satisfied that the persons signing (in this case) the transfer are the same persons as the registered proprietors. Registration of the restriction was a sensible precaution given that our clients were living in the Caribbean for several years.</p> <p>Given that our clients have returned permanently to the UK, it would be permissible to apply for cancellation/withdrawal of the restriction in any event. However, given that the steps that would need to be taken in relation to this are the same as would apply if the application for cancellation/withdrawal were accompanying an application to register a disposition, there is little reason (and, quite possibly, insufficient time) to do simply so as to present the Buyers with an 'uncluttered' title.</p> <p>The certificate must be provided by an individual conveyancer. In particular: (i) the application will be rejected if it is signed in the name of 'Kempstons' rather than a named individual (and the individual's signature must be 'wet-ink' rather than typed or stamped) (see rule 217A(2) of the Land Registration Rules 2003), and (ii) in the case of CILEX-qualified individuals, only a CILEX Conveyancing Practitioner can provide the certificate (even though the task of verification may be carried out by a Chartered Legal Executive).</p> <p>There is no prescribed wording for the form of the certificate (although it will usually closely follow the wording of the restriction itself). Alternatively, Form RXC can be used to demonstrate compliance.</p>	9
2(c)	<p>Responses should include:</p> <p>It is a conveyancer's duty to advise clients as to how they might co-own property and the advantages/disadvantages of the available options.</p> <p>Buyers are an unmarried couple with adult children from previous relationships. They own 25 Manor Close as joint tenants at law and in equity (no Form A restriction), which presumably was a choice based on advice received at the time of acquisition. But it may have been driven by circumstances which are no longer apposite (eg if children were not then adult/independent), or intervening circumstances may have changed their perspective on what is now the right approach.</p> <p>If they hold Plot 1, Seaside View as beneficial joint tenants, there will be a right of survivorship to the survivor, who is then free to dispose of the</p>	9



	<p>property as they choose – including to the complete exclusion of some individuals. If they hold the property as tenants in common, only the legal estate would be as joint tenants (and for present purposes that would be a relatively inconsequential consideration). The beneficial/equitable interest would be held as tenants in common (and the respective interests would pass under their respective Wills or (failing those) under the intestacy rules will apply. Unless stated otherwise, the law would assume a 50/50 split (Stack v Dowden): the clients should be invited to consider whether that was appropriate (not only in relation to past contributions/commitments but also those which they are able to anticipate for the future). They should also be advised that any decision they make now as to respective shares need not be ‘static’, but could be drafted so as adjust with changes in circumstances.</p> <p>It is ultimately the choice of the clients, who can then make an informed choice.</p>	
Question 2 Total:27 marks		
3(a)	<p>Responses should include:</p> <p>The conveyance dated 25th August 1946 contains a restrictive covenant limiting the use of Plot 1, Seaside House “a single private dwellinghouse”. Subject to any proof that the covenant was not correctly registered as a Class D(ii) land charge on creation (and so was defeated by a first sale for valuable consideration after that date), this covenant binds the owners for the time of the property, including our clients once they have completed their purchase.</p> <p>Ordinarily, use of part of the property for the pursuit of a hobby would not infringe the covenant, but in this particular instance Wendy-Anne Marshall’s hobby is also a business, which may infringe. Ultimately, the issue as to any actual breach is likely to be one of fact and degree (eg how many paintings a year does she sell, do actual/prospective buyers visit the property or do they simply buy/browse online, etc?)</p> <p>There is no current information as to who has the benefit of the covenant, and indemnity insurance is unlikely to be available in relation to a prospective, rather than past breach. Best advice may be to carry on quietly and see what happens.</p>	8

<p>3(b)</p>	<p>Responses should include:</p> <ol style="list-style-type: none"> 1. Please confirm if the existing mortgage in favour of Peterborough Building Society affecting the whole of the title will be discharged on completion. If not, please confirm that it will be released as regards the part of the title that is being bought by our client. We will require your undertaking to hand over form DS3 on completion or when received from the Society. <p>In order that the clients may acquire the property free of the existing mortgage, and so that Kempstons can procure the required first legal charge in favour of Nationwide, a DS3 needs to be provided so that it can be lodged at HM Land Registry with the application for registration of the purchase/charge.</p> <ol style="list-style-type: none"> 2. Please confirm that a Land Registry compliant plan will be provided. <p>Document 6 does not satisfy HM Land Registry requirements (see LRPG 40).</p> <ol style="list-style-type: none"> 3. Please confirm that Ernest Grundy is deceased. If so, please supply a copy of the death certificate. <p>Mr Grundy Snr still appears on the title as a registered proprietor. His death certificate will need to be produced to HM Land Registry to explain why he is not a party to the transfer. Production of the certificate is also required by the Law Society Conveyancing Protocol.</p> <ol style="list-style-type: none"> 4. Please confirm that there have been breaches of the covenants identified in entry 1 of the Charges Register. If this confirmation cannot be given, please confirm that the sellers will provide at their own expense a suitable indemnity policy (to be agreed by us) on completion. <p>The covenants run with the land and so will bind the clients after completion. Confirmation is required that there is no current liability or that any such liability will be 'covered' by an indemnity insurance policy.</p> <ol style="list-style-type: none"> 5. Please clarify the basis on which our clients will be expected to contribute towards the future cost of maintaining the Driveway. <p>The buyers are to assume a future liability in relation to this cost, so the method of apportionment needs to be agreed / acceptable.</p>	<p>11</p>
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	<p>Responses could include:</p> <ul style="list-style-type: none"> • More detail re LRPG 40 requirements re plans • Discussion that death of Mr Grundy Senior does not require a replacement trustee because a sufficient number (two) remain • Requirement for more detail re terms of proposed covenants/easements 	
3(c)	<p>Responses should include:</p> <p>The Buildmark warranty</p> <p>The NHBC Buildmark warranty gives the following post-completion protection:</p> <ul style="list-style-type: none"> • cover in relation to any structural defects arising for the first two years after completion – the NHBC requires builders to remedy any defects but if they fail to do so NHBC will remedy them • after that only major structural defects are covered for the remaining 8 years and the NHBC warranty provides insurance to cover the cost of remedying defects <p>Simultaneous completion</p> <ul style="list-style-type: none"> • Completion of the sale of 23 Manor Drive will be on whatever date is agreed between the parties or (in default of any agreed date) 20 working days after exchange (SCS 6.1.1). Completion of the purchase of Plot 1, Seaside House is triggered by service of a Practical Completion Notice by the sellers, and must follow within 10 working days – see clause 5 of the contract. The timing of the service of that notice is unpredictable, and the buyers of 23 Manor Drive are unlikely to agree to a ‘back-to-back’ trigger arrangement – consequently, simultaneous completion is unlikely. In order to secure a sale of 23 Manor Drive, the clients may need to complete their sale of it before they complete on their purchase of plot 1, Seaside House (so temporary alternative accommodation may be required). 	10
Question 3 Total:29 marks		
4(a)	<p>The identified errors are:</p> <ul style="list-style-type: none"> • should be Form TP1 - this is the prescribed form for a sale of part • panel 2 and/or 5 – incorrect address: should be Seaside View • panel 4 – incorrect sellers: Ernest Grundy should not be included • panel 5 – misspelling of Donavan • panel 8 – purchase price is incorrect 	5
(b)	<p>Covenants</p> <ul style="list-style-type: none"> • indemnity covenant • covenant not to build any extension except in accordance with plans first approved by the transferor • covenant to maintain the close boarded fence (which is to be erected by the transferor) on the boundaries of the Property (but not across the Driveway). 	10



	<ul style="list-style-type: none"> covenants expressly refer to 'transferor' as including successors in title <p>Responses should include:</p> <p>Easements</p> <ul style="list-style-type: none"> right of way at all times and for all purposes on foot or with vehicles over the Driveway subject to the transferee(s) paying [<i>agreed proportion, eg 'one half' or 'fair and reasonable proportion'</i>] of the cost of repairing and maintaining the Driveway right to connect into and use the services and drains under the Retained Land declaration that Law of Property 1925, s 62 and/or the rule in <i>Wheeldon v Burrows</i> do not apply 	
4(c)	<p>Responses should include:</p> <ul style="list-style-type: none"> Form OS2 - date of plan and quote plot number if plan previously submitted to HMLR, or copy of transfer plan - "search from date/time" on official copies search reveals any intervening entries since SFD and gives priority for 30 working days after date of OS2 (so in effect register is frozen for purposes of registering transfer/charge) the Nationwide Building Society (which also protects the clients). 	5
Question 4 Total:20 marks		