



CHIEF EXAMINER REPORT

JANUARY 2026

LEVEL 6 UNIT 15 – CIVIL LITIGATION

The purpose of the report is to provide candidates and training providers with guidance as to the key points candidates should have included in their answers to the January 2026 examinations.

The 'suggested points for responses' set out points that a good (merit/distinction) candidate would have made.

Candidates will have received credit, where applicable, for other points not addressed.

Chief Examiner Overview

Candidates, and certainly the more successful ones, did show a good awareness of the CPR and of procedures and documentation. Candidates generally need to look more closely at the precise wording of questions. There were several answers which ranged considerably beyond anything which could reasonably be considered to fall within the scope of the question because of the specific words used. Candidates should consider going briefly through the whole document to note the coverage of the various questions. This would assist when considering what material to provide at which point.

Candidate Performance and Suggested Points for Responses

It is noted that the low numbers of candidates taking the Level 6 exams limits the scope for constructive feedback to be given and for firm conclusions to be reached. Therefore, feedback on candidate performance may be limited.

Question 1a	8 marks
Several candidates ignored the information provided that there was no BTE or association funding available. Several also ignored the implications of QOCS. Most candidates recognize that a CFA was probably the best option, but the accuracy and completeness of the explanation of a CFA varied considerably.	
Suggested Points for Response:	
• BTE and membership of a TU etc excluded by the CSM so no credit. • Private funding is a possibility but there is no information about the means of the Richardson family and this is probably not advisable. • CFA is likely to be appropriate. • QOCS Needs to be explained. • CFA Means the solicitors will only be entitled to costs in the event of success, but will be entitled to a success fee representing an appropriate proportion of the base costs. • Base costs and disbursements, but not the success fee, are recoverable from the defendant. • As the claimant is a protected party any shortfall in recovery of base costs cannot be recovered from the claimant. • The total recoverable by way of success fee cannot exceed 25% of the damages for pain, suffering and loss of amenity (as there will be no claim for loss of earnings). • DBA could also be referred to with the explanation that here the compensation to the solicitors for not claiming costs from the client is calculated as a percentage of the damages which again cannot exceed 25%. • ATE may be appropriate to cover the risk of having to meet disbursements or the defendants costs (e.g. if a Part 36 offer is not beaten).	

Question 1b	8 marks
Nearly all candidates correctly identified that the claimant was a child and therefore under a disability and would need to be represented by a litigation friend. Most were able to explain the qualifications for a litigation friend and some also explained the duties and responsibilities of such a friend.	
Suggested Points for Response:	
• As a young child, the claimant must be represented by a litigation friend. • CPR art 21 is the relevant provision. • The litigation friend must give an undertaking to pay any costs ordered against the child, but may be entitled to recover these from the assets of the child. • The litigation friend must be capable of conducting the proceedings. • The litigation friend must have no adverse interest. • In this case if it is being suggested that some liability may attach to the parents for not supervising the child appropriately, it may be appropriate for some other relative, such as a grandparent, to act as litigation friend. • The litigation friend must file at court a certificate of suitability confirming that the above prerequisites are satisfied and with a statement of truth. • Strictly speaking, a litigation friend is required only once proceedings are commenced, and so the pre action phase can be undertaken without a formal appointment.	

Question 1c	8 marks
Candidates were generally vague and/or inaccurate about whether a protocol applied. The quantum of the claim is obviously significantly above £25K on full liability. It could in terms of subject matter fall within the EL/PL protocol but is excluded by value. It also falls outside the generic personal injury protocol for the same reason. It therefore must be dealt with under the PDPACP Direction. As this requires compliance with the spirit of the protocols irrelevant information about actual steps could be credited.	
Suggested Points for Response:	
• The claim does not fall within any of the specialised protocols. • Having regard to the severity of the injuries, it is likely that the total value of the claim exceeds £25000. • This is above the limit for application of the generic Personal Injury Preaction Protocol, which is intended to apply to claims below the upper limit for the fast track. • However paragraph 1.1.2 states that the spirit, if not the letter, of the protocol should still be applied to higher value claims to give effect to the 'cards on the table' approach which forms part of the overriding objective. • The Practice Direction Pre-action Conduct and Protocols will apply. • Both the Protocol and the PD require exchange of information before proceedings are commenced. • The claimant would be expected to write a letter of claim setting out the nature of the claim and the basis of liability and giving an indication of the extent of the injuries in accordance with paragraph 5 of the Protocol. • Having regard to the nature of the injuries the parties would be expected to cooperate in relation to rehabilitation. • Consideration should also be given to whether some form of ADR is appropriate.	

Question 2a	10 marks
Candidates were generally able to explain the rules governing the structure and presentation of a witness statement. Discussion of what the content of this particular statement should be was much more varied. Some candidates did identify the various points which the witness could include based on her own observation of the events. A much smaller number identified that there was inadmissible opinion which could not be included.	
Suggested Points for Response:	
• The requirements for witness statements are covered in CPR Part 32 and the associated PD. • In terms of substance the witness statement should: • Be in the witness's own words and in the first person. • Deal with the matters covered in a logical order in numbered paragraphs. • Be confined to facts which are in the knowledge of the witness. • Not give an opinion, for example on issues of liability. • Here Lorraine Carpenter can describe what she saw, namely that the young guests at the wedding were playing and running around and that Emma fell over the edge of the lawn. • She can also give her account of the fact that none of the adults in the wedding party or any of the waiting staff appeared to be paying any attention to what the young children were doing. • She cannot however state that she considered that the absence of fencing or warnings was dangerous for adults 'let alone for children.' • There must be a statement of truth: CPS Part 22.1. • Formal requirements as per PD32 paragraphs 17-20. • Heading of the action; details of the date, number of the statement, for which party. • Full details of the witness. • By what process the statement was obtained. • Numbered pages.	

Question 2b	8 marks
Nearly all candidates identified that P36 offers are intended to secure the speedy and economic resolution of claims by achieving a compromise. Discussion of the actual mechanics was quite variable in terms of depth and clarity. There was a general recognition that nonacceptance of an offer which was then not beaten would have adverse consequences, but many candidates failed to distinguish effectively between those consequences in the case of a defendant's offer and in the case of a claimant's offer.	
Suggested Points for Response:	
• Part 36 offers are a means by which the parties can bring a claim to an early conclusion. • Either party may make an offer as to the amount of damages it is prepared to offer or accept as the case may be. • An offer can be made at any stage, including before the commencement of proceedings. • The offer must be in writing and comply with the procedural requirements of Part 36. • It must remain open for acceptance for at least 21 days but can then be revoked but otherwise will remain open for acceptance. • If an offer is accepted the defendant becomes liable for the claimant's costs and must pay the amount of the offer within 14 days. • The existence and terms of any offer are not disclosed to the judge if the case goes to trial. • There are adverse cost consequences If the claimant fails to secure a judgment more advantageous than the defendant's offer, or if judgment is at least as advantageous to the claimant as the terms of the claimant's offer. • In the first case the defendant is entitled to costs from the expiry of the 21 day period following the making of the offer. • In the second case the claimant is entitled to costs on the indemnity basis and interest on those costs at not more than 10% above base rate together with such interest on the amount of damages awarded. • This is subject to the overall discretion of the court in relation to the award of costs based on the conduct of the parties and other relevant considerations.	

Question 2c	8 marks
This question clearly required a detailed explanation of the procedure for infant settlements involving the commencement of a P8 action and also an indication of the documents which would need to be provided for the judge hearing the application. Most candidates did not identify the relevant procedure, although a significant minority simply treated it as an ordinary consent order.	
Suggested Points for Response:	
• As the claimant is a child if the defendant makes a satisfactory offer to settle the claim which is acceptable and to the litigation friend on the advice of counsel this must be approved by the court. • Part 8 proceedings must be commenced and all relevant information about the circumstances of the accident, the nature of the injuries and the amount and basis of the settlement must be disclosed to the court. • The court must also approve the arrangements for investing or otherwise dealing with the damages. • The court may order that the funds be held in court and invested. • The court may approve the release of the funds to the litigation friend to be invested in a savings account or other suitable investment. • If funds are required to meet the wants and needs of the child, the court can give appropriate directions. • When the child reaches 18 any funds in court and any funds being invested on the child's behalf must be paid over to the child.	

Question 3a	12 marks
The facts clearly indicated that this is a claim which must be commenced using the DCP and therefore completing the claim form and other documents electronically in the portal with service also taking place electronically as the defendant's solicitor was clearly stated to be DCP compliant. A significant number of candidates did not appear to be aware of this and answered the question as though it required producing a paper claim form and particulars of claim.	
Suggested Points for Response:	
• As this is a claim for damages it will be issued in the County Court in the Civil National Business Centre in Northampton. • As Kempstons is registered with myHMCTS the claim will be commenced using the damages claims portal (DCP). • This provides for the necessary documentation to be generated electronically. • The claimant will also have to pay the appropriate issue fee. • The documents which will be generated electronically are: • a claim form, which must provide details of the parties, their legal representatives (if any) and provide a brief outline of the nature and value of the claim. • Particulars of Claim setting out the factual and legal basis of the claim. • In this case It will be necessary to recite concisely the contractual history between the parties, the circumstances of the disputed consignment, the basis on which it is alleged that the consignment was in breach of contract, Details of the elements comprising the overall damages claim and the claim for costs and interest (if appropriate on a contractual basis). • Any supporting documents, such as a copy of the relevant contract must also be uploaded. • If the defendant is represented by solicitors registered with myHMCTS, Kempstons must notify them through the DCP that the claim form has been issued. • Otherwise Kempstons must serve a paper copy of the claim form generated in the DCP. • In each case confirmation of the notification should be given within the DCP	

Question 3b	5 marks
Given the information about the value of the claim, it clearly fell within the intermediate track. Most candidates recognised this, but some inexplicably allocated it to a different track. Additional information was generally limited to points about directions.	
Suggested Points for Response:	
• The claim is valued at some £67500. • The intermediate track is the normal track for claims valued at between £25000 and £100000: CPR Part 26.9. • Once a defence is filed a court officer will make a provisional allocation and require the parties to complete the directions questionnaire. • Once this has been done a definitive allocation will be made. • There is nothing to suggest that the intermediate track is not appropriate, and the case is likely to be assigned to complexity band 2. • Standard directions are likely to be issued, although the parties can ask for specific directions if appropriate. • Fixed costs will apply pursuant to CPR Part 45, unless disapplied in any of the circumstances set out in that Part.	

Question 3c	6 marks
Most candidates recognised that this question related to disclosure. They generally identified that a request should be made directly to the solicitors for further disclosure and that if that were not successful an application for specific disclosure could be made. Only a minority discussed the criteria, and in particular whether the documents were likely to be material and whether disclosure was likely to be proportionate.	
Suggested Points for Response:	
• Standard directions provide for discovery by way of disclosure by list. • If a party considers that the list of the adverse party is incomplete, the initial step to be taken is to make an informal request for disclosure of the allegedly missing items. • The next step would be an application to the court for specific disclosure. • Kempstons will need to satisfy the court that it is likely that the documents exist, that disclosure and inspection is relevant to an issue in the case and that the disclosure being requested is proportionate. • If disclosure is still not forthcoming an application can be made for an unless order debarring the defendant from defending in the absence of proper disclosure.	

Question 4a	8 marks
Responses did rightly identify that it was a breach of rule and the statement could only be used with leave of the court. The claimant would have to apply for relief from sanctions, and the application will be considered against the Denton criteria. In this case given the speed with which the error was recognized neither delay nor significant impact on the progress of the case was likely to be present and although human error of this kind is not in itself acceptable leave would likely be given pursuant to the overriding objective. If asked to consent, the defendant might well do so.	
Suggested Points for Response:	
• A failure to serve a witness statement within the time specified by the court has the consequence that the evidence of that witness cannot be used without the permission of the court: CPR Part 32.10. • As a matter of professional conduct, Kempstons must advise the client that a breach has occurred. • It will be necessary to apply to the court for relief from sanctions in relation to the failure to serve the statement on time. • The court will consider this application by reference to the Denton criteria. • An oversight of this kind is not an excusable reason for the error. • It has however been identified very promptly. • It can be easily rectified. • There does not appear to have been any significant prejudice to the defendant or to the conduct of the proceedings. • Kempstons may ask the defendant to consent to the application for relief, and the defendant may agree to this in the interest of the overriding objective.	

Question 4b	6 marks
Too many candidates went on at length about single joint experts to no real effect. The focus should have been on how the situation where each party had its own expert should have been managed. This could involve questions to the experts, a meeting of experts to produce a statement of agreed facts and points of disagreement, the management of oral evidence, e.g. hot tubbing, and the general role of the court in ensuring proportionality.	
Suggested Points for Response:	
• In the circumstances the court is likely to allow each party to rely on its own expert and for their written reports to be served and filed. • It is likely that they will also be allowed to give oral evidence. • The court may direct that the experts meet and produce a joint statement indicating matters on which they are agreed, matters on which they disagree and the reasons: CPR Part 35.12. • The court may order that the experts give evidence concurrently: PD 35.11. • A party may put proportionate questions to an expert witness for an adversary in relation to the contents of their expert report.	

Question 4c	6 marks
Only a small minority were able to identify the key points, that it is an appeal to the high court, that leave was required, that leave would be granted only if the appeal had a real prospect of success or there was some other compelling reason, that if leave is granted it will be a review not a rehearing, and that the appeal will be allowed only if the appeal judge is satisfied that the decision below was wrong or unjust by reason of a serious irregularity.	
Suggested Points for Response:	
• An appeal can normally only be made with leave either granted by the trial judge or on an application to the appeal court. • Leave will only be granted if it is considered that the appeal has a real prospect of success or there is some other compelling reason. • Normally an appeal against a decision by a Circuit Judge will be heard by a High Court Judge. • The respondent to an appeal can file a respondent's notice in relation to any aspect of the judgment which it wishes to appeal. • The appeal takes the form of a review and not a rehearing. New evidence will not normally be admissible. • The appeal will be allowed if the appeal judge is satisfied that the decision below was wrong or unjust by reason of a serious irregularity.	

Question 4d	7 marks
Most candidates ignored the first part of the question relating to the ascertainment of costs. As this case was in the intermediate track there would normally be fixed costs at first instance ascertained in accordance with Table 14 in PD44. The cost of the appeal would be subject to assessment on the standard basis in the absence of agreement.	
Suggested Points for Response:	
• Their costs at trial will be determined using the table of fixed costs applicable to a claim on the intermediate track. • These amounts can be exceeded in exceptional circumstances. • The costs of the appeal will be subject to assessment on the standard basis if not agreed. • There are a number of a procedures for enforcement available. • Initially it may be appropriate to carry out a credit check on the defendant or require an officer of the defendant to attend court and to be examined as to the financial position of the defendant. • The winding up of the defendant company if not satisfied. • If it appears that the defendant has credit balances at the bank or elsewhere an application for a third party debt order can be made. • The case could be transferred to the high court with a view 2 obtaining a writ of control which would allow the sheriff's offices to seize the property of the defendant. • If the defendant owns property a charging order could be obtained and if necessary followed up by an application for an order for sale.	