



CHIEF EXAMINER REPORT

JANUARY 2026

LEVEL 6 UNIT 18 – CRIMINAL 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

Ten candidates attempted the examination.

There was some engagement with the facts and circumstances of the two scenarios and an attempt to apply law and procedure accordingly, but this was not consistent. Similarly, while there was some engagement with the sentencing guidelines, this was not generally the case. Previous reports have stressed the importance of both engaging with the facts and researching what the likely sentencing parameters are for the offences in the scenarios. It would seem to be the case that candidates are not acting appropriately on this important guidance.

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	6 marks
This question required a discussion of s18 and 32 PACE. Most candidates recognised this at a threshold level but lacked detailed knowledge although there were some reasonably competent answers in relation to s18.	
Suggested Points for Response:	
• There is no suggestion that a search warrant is in existence. • James Anderson has been arrested for an indictable offence. • As a result s 18 PACE is relevant. • It permits a search of premises occupied or controlled by a person arrested for an indictable offence. • There must be reasonable grounds for suspecting that evidence relating to that offence or a connected indictable offence is present. • Such a search normally requires the authority of an inspector: s 18 (4). • If the presence of the suspect at a place other than the police station is necessary for the effective investigation of the offence a search may be conducted without prior authorisation by an inspector. • Given that James Anderson was arrested at his home, it is arguable that that condition is satisfied. • S32 PACE is also relevant. • It authorises a search on arrest of the person arrested and also a search of the premises where the person was at the time of the arrest on reasonable suspicion that evidence will be found. • Accordingly it is likely that evidence resulting from the search will be admissible. •	

Question 1b	8 marks
This was a very straightforward question on identification procedures. However, some candidates did not recognize the primacy of video ID procedure. The potential problem with acne was spotted, but not that relating to the beard. The level of discussion of the role of the legal representative was very basic in most cases.	
Suggested Points for Response:	
• James Anderson is an available suspect, who is denying involvement. • The preferred identification procedure is a video procedure using VIPER/PROMAT. • Standardised video footage of the suspect and eight comparators will be shown to the witnesses individually. • A senior police officer independent of the investigation will be responsible for the integrity of the process. • This procedure is considered to be the most preferable one as it appears to reduce the possibility of false positive identifications. • The legal representative will be entitled to sight of the initial descriptions given by the witnesses. • In this case a wispy beard appears to be a key aspect of the descriptions given by witnesses, so all comparators should have such a beard, if necessary by digital manipulation. • The acne referred to does not appear to be mentioned by the witnesses, so should be digitally removed. • The suspect must consent to a video procedure. • The failure to consent may result in adverse inferences being drawn at trial. • Failure to consent may also result in alternative less objective procedures such as the use of covert video, group identification or even confrontation.	

Question 1c	5 marks
Most candidates recognised that there was the potential for recall on the basis that there was a breach of the conditions of the DTO but did not identify that it was for the court to order recall.	
Suggested Points for Response:	
• The DTO provides for a period of custody which is normally 50% of the duration of the order. • Thereafter the offender will be conditionally released into the community. • That release will be under the supervision of a probation officer or a Youth Offending Team. • Schedule 12 of the Sentencing Act 2020 makes provision for the breach of the conditions applying to that release. • A Youth Court may return the offender to custody if a breach of conditions is established. • This may be the case here if there has been a breach of the curfew. • There are provisions dealing with a situation where such a return clashes with a sentence imposed for a later offence.	

Question 1d	8 marks
Some candidates did address the question of whether the mother was an appropriate person to act as the appropriate adult, but others missed this. The very standard advice on how to approach the interview was not generally clearly and effectively explained. There was little discussion of how the client's concern not to incriminate his brother could be most effectively addressed.	
Suggested Points for Response:	
• James Anderson is a juvenile. In addition to his legal representative there should be an appropriate adult present at any interview. • The police have summoned his mother as the appropriate adult. • The appropriate adult is not bound by any rules of confidentiality. Given what James Anderson says about his mother's behaviour on a previous occasion, it may be appropriate to make representations that she should not be the appropriate adult on this occasion. • In relation to the interview James Anderson has the usual options. • It is the decision of the client what approach is to be taken. • The solicitor can intervene to prevent inappropriate questioning but ultimately the conduct of the interview is in the hands of the police. • Giving answers to all questions in the interview may be appropriate if the client has a good answer to the allegations. It runs the risk of self-incrimination. • A no comment interview avoids the risk of self-incrimination, but creates a risk of adverse inferences if subsequently matters are raised which could have been raised in interview. • Answering some questions but not others is not recommended, as it appears evasive and unconvincing. • A no comment interview can be accompanied with a written statement. This allows the suspect to put a version of events to the police. There is a potential disadvantage if the statement does not coincide with the case put at trial. • One advantage of a no comment interview with a written statement here is that there is no need to include anything in the written statement which might affect the position of the client's brother.	

Question 2a	10 marks
This was a very straightforward version of a standard question requiring knowledge of how a case of a juvenile appearing alone will be dealt with. Several candidates wrongly suggested that because the offence was indictable only for an adult it would automatically go to the crown court. Similarly, the availability of committal for sentence, which makes it highly likely that the youth court will retain jurisdiction for the trial, was not properly understood or explained.	
Suggested Points for Response:	
• James Anderson is a juvenile. • It is clear that at the moment there are no other co-accused. • James Anderson must therefore appear for his first appearance in the Youth Court. • This court has specific procedures and arrangements which make it uniquely suited to deal with cases involving juveniles. • The offence with which James Anderson is charged carries a sentence of life imprisonment for an adult. • A juvenile does not have any right of election. • It is for the court to determine what the appropriate venue is. • There is a strong presumption that the Youth Court will retain jurisdiction. • There is power to commit for sentence to the Crown Court if the likely sentence exceeds the maximum power of the Youth Court which is a 24 month Detention and Training Order. • Wounding with intent is a grave crime. • In principle the case could be committed for trial to the Crown Court. • This is a grave crime as it carries a potential sentence of life imprisonment for an adult. • It is also a violent crime and potentially triggers the dangerous offenders criteria. • Nevertheless it is likely that the Youth Court would accept jurisdiction for the trial knowing that committal for sentence is possible in any event. • Issues of dangerousness would have to be assessed with reference to presentence reports and other information. • The Sentencing Council guidelines for GBH/wounding with intent indicate that the use of a dangerous weapon such as a machete places the offence in culpability category A, but the injuries do not appear to be more serious than harm category 2. • This would involve a sentence for an adult ranging from 6 to 10 years. • A substantial discount should be applied to a 16-year-old juvenile. • The Youth Court could commit for sentence the Crown Court on the basis that a more substantial sentence should be imposed.	

Question 2b	6 marks
Most candidates identified that this question involved a problem with and potentially being involved in misleading the court. It was generally recognised that the lawyer could not be involved with allowing a witness to give evidence which was fabricated. There was less clarity over and what might then occur, with it only being necessary to withdraw from the case if the client insisted on that evidence being led.	
Suggested Points for Response:	
• The initial apparent change in the account being given by the defendant does not raise any conduct issue. • It is not for the legal representative to assess the veracity or otherwise of the client, but to act on instructions. • It appears that the proposed witness will not be giving truthful evidence if he provides an alibi. • The SRA Code of Conduct provides that a solicitor (and by extension a fee earner within a solicitor's practice) must not mislead or be party to misleading the court: 1.4. • This also applies to being complicit in the court being misled by the client or another. • If James Anderson insists that the witness should be called to give this misleading evidence you cannot continue to act on that basis. • If James Anderson accepts your advice that the witness cannot be called for this purpose you can continue to act. • Otherwise you must withdraw from the case, but must not breach client confidentiality by giving any information as to the reasons for this.	

Question 2c	14 marks
Generally candidates do at least indicate what it is the prosecution must prove in order to satisfy the legal and evidential burden. This was not really discussed here, even to the extent of identifying that the issue in the case was whether the client was the assailant. While candidates did recognize that identification was an issue, the coverage of the <u>Turnbull</u> guidelines and how they should apply in this case was not clearly or logically explained. More discussion was needed of what weight should be attached to the DNA evidence. There was also the point that any explanation about the towel was not given in interview and therefore the prosecution could seek a direction in relation to inferences if it is raised in evidence.	
Suggested Points for Response:	
• The legal and evidential burden is on the prosecution to the criminal standard. • The prosecution must satisfy the court so that they are sure that James Anderson was the person responsible for inflicting the injuries on Evan Flanders and in doing so he intended to cause a wound. • There appears to be no doubt that Evan Flanders did sustain a wound in the course of an attack in which a machete was used with considerable force. • The real issue is whether it was James Anderson who inflicted the wound. • The prosecution case is largely based on the identification evidence of the two witnesses. • The evidence is disputed and therefore a Turnbull direction should be given. • The court should be warned that the ability of humans to identify each other is fallible, and that an honest witness may be mistaken. All we at present know is that these witnesses observed an incident during the hours of darkness but in a relatively well lit area. • It would be necessary to ascertain further circumstances such as the distance between the witness and the incident, the length of time that the witness had the suspect insight, any issues relating to the age or eyesight of the witness, and any circumstances which might render the witness unreliable or potentially biased. • The court should assess whether the evidence is strong or weak, and if it is weak would normally direct themselves that they should seek corroboration. • However, in this case the two witnesses, assuming they are independent of each other, would cross corroborate. • The forensic evidence relating to the bloodstains does appear to prove that the machete found at James Anderson's home was the weapon used to attack Evan Flanders. • The presence of James Anderson's DNA on the towel potentially provides some link between him and the machete itself. • The explanation given by James Anderson, if true, would provide an innocent explanation for the DNA. • This explanation was however not given in the statement supplied at the time that James Anderson gave his no comment interview. • The prosecution could therefore apply for a direction in relation to adverse inferences if this explanation is given in evidence: s 34 Criminal Justice and Public Order Act 1994. • Such an inference could further reinforce the identification evidence. • The previous convictions are not likely to give rise to an application to admit them as evidence of bad character. There is no history of violent offending. • The convictions for dishonesty could in principle be used to attack the credibility of James Anderson, but the court may consider that would not be proportionate or just. • If James Anderson were to assert that he is of good character, that would potentially bring his bad character into issue.	

Question 3a	11 marks
This is a very straightforward question on plea before venue, mode of trial/allocation and election. It also required research to establish what the relevant sentencing guideline would be. Only a couple of candidates made any attempt to explain what the guideline would mean in terms of starting point and range. Most candidates explained plea before venue to a satisfactory level. However, the discussion of the allocation process was in nearly all cases disorganized, superficial and did not focus on the key question of whether the magistrates court had adequate sentencing powers.	
Suggested Points for Response:	
• The first hearing will take place in the magistrates court. • Sophie Grainger will initially be asked to indicate a plea. • If she were to indicate a plea of guilty, this will be treated as such and she can either be sentenced in the magistrates court (possibly after an adjournment for a presentence report) or committed for sentence to the Crown Court if the magistrates decide that their powers of sentencing are inadequate. • If the indication is plea of not guilty or no indication is given, the court will proceed to consider the appropriate mode of trial or allocation. • This is governed by s 19 Magistrates Courts Act 1981 and Rule 9 of the Criminal Procedure Rules. • There is a presumption in favour of summary trial. • The primary consideration is whether the magistrates have sufficient powers to sentence in the event of a conviction. • In this case the maximum sentence is one of six months imprisonment. • Other factors may be relevant, but this does not appear to be a case of any great complexity or otherwise more suitable for trial in the Crown Court. • According to the sentencing guidelines this case appears to fall within culpability band B as there is an element of breach of trust and harm category 2 as the goods are of medium value and their sentimental value means that there has been substantial harm to the victim. • If the rings have been recovered and can be restored to the owner this would mitigate the harm and reduce it to harm category 3. • The starting point for an offence assessed as B2 is 12 months custody with a range from 26 weeks to 2 years. • The starting point for an offence assessed as B3 is a high-level community order with a range extending upwards to 36 weeks imprisonment. • The court would invite the prosecution to outline the circumstances of the offence and make representations as to where the case should be tried. • The defence may also make representations, but the court must assume that the case is at least as serious as it is represented to be by the prosecution. • If the magistrates are prepared to accept jurisdiction Sophie Grainger will be put to her election as to whether she accepts summary trial or elects trial on indictment before the Crown Court. • In this case Sophie Grainger should be advised that there is statistically a higher chance of acquittal in the Crown Court. • The sentencing powers of the Crown Court are higher, while the magistrates court can commit for sentence if they decide at the end of the trial their powers of sentence are inadequate because of the way in which evidence has emerged, this is not, so accepting summary trial gives some assurance in relation to the eventual sentence. • There is likely to be a quite lengthy delay before any trial in the Crown Court so the matter will be hanging over Sophie Grainger for longer. • Trial in the Crown Court is more formal and stressful.	

Question 3b	6 marks
Most candidates recognised at a threshold level that hearsay evidence could be admitted. Some went on to say that this was pursuant to CJA 2003, but there was very little evidence of detailed knowledge of the statutory provisions and the criteria that would need to be satisfied.	
Suggested Points for Response:	
• The presumption is that evidence will be given orally in court (unless a written statement has been accepted). • Article 6 (3) (d) ECHR gives the defendant the right to examine or have examined witnesses against him. • S 116 Criminal Justice Act 2003 provides that a statement not given as oral evidence is admissible if oral evidence to that effect would be admissible, the witness is satisfactorily identified, and the witness is unfit because of bodily or mental condition to give evidence. • The trial judge has discretion to exclude evidence not given orally either pursuant to s 127 CJA 2003 or s 78 PACE. • The European Court of Human Rights has accepted the decision of the Supreme Court that the overall framework regulating the admissibility of the evidence of an absent witness is compatible with Article 6: Al -Khawaja (2014).	

Question 3c	6 marks
Candidates generally recognised that a failure to surrender was potentially an offence, but there was considerable uncertainty around reasonable excuse and also in relation to the advice that should be given to the client to surrender once the medical emergency had passed.	
Suggested Points for Response:	
• Failure to surrender to bail without reasonable cause is a criminal offence: s 6 Bail Act 1976. • If there is reasonable cause the defendant must nevertheless surrender to custody once that cause is no longer operative. • Here the very serious illness of a young child would appear to constitute reasonable cause. • The legal representative should inform the court of the situation. • The judge may adjourn the case and may in those circumstances enlarge the bail to the adjourned date. • If this is not done Sophie Grainger should be advised that as soon as the medical situation has stabilised she should surrender to custody. • If Sophie Grainger does not comply, there will be a further interim hearing at the Crown Court where the question of bail will be reconsidered. • Conditions may be imposed, and in principle she could be remanded in custody to await the trial. • Having regard to the circumstances and to parental responsibilities this is, however, somewhat unlikely.	

Question 4a	6 marks
This question essentially required a proper discussion and application in relation to the <u>Vye</u> direction. A small minority of candidates recognised this and dealt with the question effectively. Most candidates failed to appreciate that the question was not about how the issue of good character should be dealt with in general during the trial, but about the specific entitlement to the two-part direction on propensity and credibility.	
Suggested Points for Response:	
• As Sophie Grainger is of previous good character she is entitled to a full <u>Vye</u> (1993) direction as to good character. • The first limb of the direction relates to propensity. • The judge should direct the jury that a person of good character is less likely to act dishonestly. • The second limb of the direction relates to credibility. • The judge should direct the jury that a person of good character is more likely to be giving truthful and accurate evidence. • This limb is only relevant if Sophie Grainger gives evidence. • The direction is mandatory and failure to give it would almost certainly be grounds for appeal.	

Question 4b	8 marks
This question again required consideration of a specific direction that has to be given in relation to dishonesty. The definition of dishonesty and basis for the direction stems from the civil case of <u>Ivey</u> (2018) which was confirmed as applicable in criminal cases in <u>Barton and Booth</u> (2020). Dishonesty involves two elements. The first requires the jury to be directed that they should consider what the actual state of knowledge and belief of the defendant was in relation to the facts of the case. The second requires the jury to consider whether they are satisfied to the criminal standard that the acts of the defendant in the light of that state of knowledge are dishonest by the standards of ordinary decent people. The jury represent ordinary decent people for this purpose. The precise wording of the direction will vary depending on the circumstances of the case.	
Suggested Points for Response:	
• The definition of dishonesty and basis for the direction stems from the civil case of <u>Ivey</u> (2018) which was confirmed as applicable in criminal cases in <u>Barton and Booth</u> (2020). • Dishonesty involves two elements. • The first requires the jury to be directed that they should consider what the actual state of knowledge and belief of the defendant was in relation to the facts of the case. • The second requires the jury to consider whether they are satisfied to the criminal standard the acts of the defendant in the light of that state of knowledge are dishonest by the standards of ordinary decent people. • The jury represent ordinary decent people for this purpose. • The precise wording of the direction will vary depending on the circumstances of the case.	

Question 4c	6 marks
Several candidates erroneously discuss the procedure for appeal from the Magistrates Court to the Crown Court and secured no marks as this was irrelevant. Of those who did discuss the correct form of appeal did not limit their discussion to an appeal against sentence as required by the question but discussed issues relating to appeal against conviction, which again were irrelevant.	
Suggested Points for Response: • Since the case was tried in the Crown Court an appeal will lie to the Court of Appeal (Criminal Division). • An appeal against sentence requires leave of the Court of Appeal (unless the trial judge has issued a certificate that the case is fit for appeal). • The time limit for applying for leave to appeal against sentence is 28 days from the date when sentence was passed. • Trial counsel should settle the grounds of appeal if of the opinion that they exist. • The application for leave will normally be dealt with by a single Lord Justice on the papers. • If leave is refused the application can be renewed before the court. • The criteria for allowing an appeal are that the original sentence was wrong in law (which does not appear to be the case here) or falls outside the range of sentences which the Court of Appeal considers appropriate. • Here, given the position of the daughter, it is strongly arguable even if a custodial sentence was required it should have been suspended. • Even if the appeal is dismissed the Court of Appeal cannot increase the original sentence, although it may make a loss of time order up.	