



CHIEF EXAMINER REPORT

JANUARY 2026

LEVEL 6 UNIT 20 –THE PRACTICE OF FAMILY LAW

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 should have a good working knowledge of the scenarios in the pre-release case study materials. They should consider what the possible issues are in each situation described and use this to inform their revision. For example, the scenario for question 1 on divorce indicated a jurisdictional issue and included a reference to the Wills and pensions of the couple concerned.

Candidates are also advised to use previous CE reports, which include mark schemes, for information how to answer certain questions and what to include.

It is important to read question carefully and answer as instructed and with reference to the mark allocation. Some questions have lower mark allocations than others. A question carrying 5 marks can only achieve 5 marks however much a candidate writes. A question carrying 18 marks requires a much more detailed answer.

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 1(a)	10 marks
The majority of candidates were able to show knowledge of jurisdiction and of its relevance to Mrs Williams divorce application.	
Suggested Points for Response:	
• S3(1) Matrimonial Causes Act (MCA) 1973 Divorce proceedings cannot be commenced during the first year of marriage • Mrs Williams will have to wait until August 2026 before she can make an application • S5(2) Domicile and Matrimonial Proceedings Act (DMPA) 1973 sets out the basis on which the court has jurisdiction • The key factors considered are “domicile” (main and permanent home) and “habitual residence” (where the parties are currently living) • Here Mr and Mrs Williams are both domiciled in England and Wales and habitually resident here so Mrs Williams can apply for a divorce here • S1(1) Divorce, Dissolution and Separation Act (DDSA) 2020 • The ground for divorce is irretrievable breakdown of marriage • The DDSA 2020 introduced the concept of “no fault” divorce – there is no longer a requirement to satisfy a “fact” • Mrs Williams simply needs to state that her marriage has irretrievably broken down and does not need supporting evidence, • Mr Williams cannot object	

Question 1(b)	9 marks
The majority of candidates showed good knowledge of the divorce process.	
Suggested Points for Response:	
• Complete and submit application form (on-line via divorce portal or by form D8 by post) • Need to send/upload marriage certificate and fee of £612 • Must also include a statement that the marriage has broken down irretrievably • A copy of application must be served on Mr Williams, the respondent, together with an acknowledgement of service form which must be returned within 14 days • Mr Williams can no longer contest the divorce, unless there is an issue with procedure • Once service is acknowledged there is a 20 week “cooling off” period to consider position and to sort out finances etc • After 20 weeks can apply for a conditional order and if all documents in are in order a certificate of entitlement will be issued • After 6 weeks and a day can apply for the final order which ends the marriage • A divorce should normally be obtained within a minimum of 6 months	

Question 1(c)	5 marks
Those candidates achieving low marks were not able to show knowledge of the impact of divorce on Wills or on pensions.	
Suggested Points for Response:	
• S18A Wills Act 1837 – subject to any contrary intention in a will, the final order will result in the appointment of the former spouse as Executor and in any bequest to that spouse automatically lapsing • The Final Order will not affect the validity of the will, apart from sections relating to the ex-spouse • However, S18A does not apply to Wills made in contemplation of a marriage that does place • Mrs Williams will was made in contemplation of marriage so the whole Will remains valid • Mrs Williams should make a new Will to ensure provision is made for Kayla • The final order also affects a former spouse's rights on intestacy as they are no longer a spouse. But it may be possible for them to claim under the Inheritance (provision for Family and Dependants) Act (IPFDA) 1975 • Widow's benefits under pension schemes will be lost when the Final Order is made • As Mr Williams pension is significantly more than Mrs Williams adjustments should be agreed ie pension sharing order • Mrs Williams should review her financial position and take necessary action before applying for the final divorce order e.g. make a new will and obtain a financial order	

Question 2(a)	7 marks
Candidates who achieved lower marks were not able to identify the full range of alternative methods available for coming to an agreement regarding finances. The methods that were identified were not explained in sufficient detail.	
Suggested Points for Response:	
• Matters can be resolved by the parties via through some form of ADR, or via a combination of ADR with agreements approved by the court (1) This can save time and money • Negotiation - write to Mr Sussman's lawyers to put forward proposals regarding the parties' finances ie negotiate. If agreement can be reached, then it can be put in a Consent order for the court to approve. • Mediation - use a mediator to assistance in agreeing the division of their assets. A mediator is neutral and cannot make the parties reach agreement. Any agreement reached is not binding unless it is incorporated in a Consent Order and approved by the court • Collaborative law – a method available to family clients needing to resolve the division of their assets. Involves a series of meetings to discuss division of assets. However, this method is not successful the parties must engage new solicitors if they are going to pursue the matter to court. • Arbitration may be available in some courts	

Question 2(b)	10 marks
Performance was disappointing, particularly as the case study should have been an indicator of this topic as a question. Candidates generally failed to identify the different trusts that could underpin a claim. Candidates were able to show some knowledge constructive trusts but where lower marks were achieved this was due to candidates not developing their answer in the detail required.	
Suggested Points for Response:	
• The main remedy for a co-habitant if a relationship breaks down is to claim a beneficial interest (an express, resulting or constructive trust) in the home under s14-15 Trusts of Land and Appointment of Trustees Act 1996 (TLATA 1996). • Alex will not be able to establish an express trust as the property is to be transferred Mrs Sussman and held in her sole name • Alex will not be able to establish a resulting trust as this requires a contribution to the purchase price (1) The property is to be transferred into Mrs Sussman's name, subject to her ability to obtain a mortgage in her sole name and taking on a mortgage. Alex, will not have contributed • Alex could try to claim a constructive trust. This requires a common intention between the parties and action by the non-legal owner to their detriment • The common intention can be either express or implied through conduct. Financial contributions such as paying for home decoration or buying furniture is not enough <u>Lloyds Bank v Rosset (1990)</u> • Payment of household expenses may suggest a beneficial interest if this has allowed the beneficial owner to pay the mortgage ie a sharing of costs. Mrs Sussman should not agree to any payment towards the mortgage • Currently, Mrs Sussman is planning to take on the mortgage and will have the responsibility for paying household bills. She can accept a small contribution from Alex. She needs to ensure that Alex is clear about the arrangement and should not accept any significant payments towards household expenses from Alex	

- Further protection could be provided by preparing a cohabitation contract addressing arrangements if Mrs Sussman and Alex are co-habiting and on the breakdown of the relationship
- The contract should include reference to Mrs Sussman as the sole owner of the property and also that any payment by Alex towards household bills does not count as a contribution which entitles him to claim an interest in the house

Question 2(c)	5 marks
Some candidates failed to achieve marks for this question and some of those who did achieve marks were only able to show limited knowledge.	
Suggested Points for Response:	
• If Mr Sussman withdraws his agreement to pay child maintenance then Mrs Sussman would have to apply to the Child Maintenance Service (CMS) • CMS will assess Mr Sussman's gross weekly income (income before deductions for NI and tax) but after occupational or personal pension scheme deductions and will take into account other income such as benefits • The CMS will calculate the weekly payments using a formula based on weekly income amount • The weekly amount can be placed onto direct pay, pay between the parties or collect and pay where the CMS collects the weekly amount and passes it on to the applicant and there are fees • There are no fees for direct pay but for collect and pay the paying parent pays an additional 20% and the receiving parent (parent with care of child) receives 96% ie pays a fee of 4% • Mr Sussman should be advised of the financial impact if he ceases making the voluntary payments	

Question 3(a)	5 marks
Candidates were able to identify the order but those who achieved lower marks did so because they failed to explain the order and how it might work in the situation described in the scenario.	
Suggested Points for Response:	
• Mr Potter should apply for a child arrangements order (CAO) under s8 Children Act (CA) 1989 • This order which will set out the arrangements for the children in respect care/contact and residence • In Mr Potter's case, it will set out arrangements for Bella and Flora to see Mr Potter and to stay with him • Although Mr Potter was not married to M/s Walters, he is their father • He therefore has an automatic right to apply for a CAO under s10(4) CA 1989 • Application should be made using Form C100	

Question 3(b)	18 marks
The candidates were required to advise of the likely outcome of an application with reference to the factors that the court would consider. Candidates who achieved lower marks either failed to provide sufficient detail of the factors, or to show a lack of understanding in application. This topic has been the subject of in previous CE reports. Candidates need to develop a methodical way of answering questions involving such topics. They should: • Identify the factor clearly and fully • Provide some development to explain what the court will consider • Apply to the case study and assess its relevance and impact	
Suggested Points for Response:	
• In deciding whether to grant a s8 order, the court will consider the principles under the Children Act (CA) 1989. The “welfare principle” (s1 Children Act 1989) states that the welfare of the children will be the court’s paramount consideration. The welfare of the children must be considered above all other wishes including those of the parents. The court will also consider the no delay principle, the no order principle and the presumption of parental involvement. • The court will apply the s.1(3) welfare checklist:- • The ascertainable wishes and feelings of the child (considered in light of age and understanding): • Bella is 13 years old and Flora is 9 years old. Bella has clearly been missing the contact with her father and is mature enough to express her views which the courts is likely to consider. Flora is younger and the weight attached to her views will depend on her maturity • The child’s physical, emotional and educational needs: • Bella and Flora appear to have a good relationship with their father. Parental involvement is a key principle of the CA and maintaining the agreed visits would be good for both children emotionally. • The likely effect on the child of any change in circumstances: • The court will not want to upset the status quo. Bella and Flora have been visiting their father regularly since their parents separated. It is only in recent months that the visits have stopped and the court is likely to want them to resume. • The child’s age, sex, background etc. • Bella is 13 years old and the court is likely to attach significant weight to her views, although Flora is younger. The girls are living with their mother but on going contact with their father would be good. The court might also consider establishing and developing a relationship with Sam, their half-brother, is to be encouraged • Any harm that the child has suffered or is at risk of suffering • On the facts as presented, it is unlikely that the court will consider the situation to be one which poses physical harm to either child. Their father has clearly been able to care for them when they visit without raising any concern. But the court may feel that there is the possibility of emotional harm that if the sisters do not regularly see their father • How capable the parents are of meeting the children’s needs • this is not an issue on the facts. There is no suggestion that Mr Potter cannot look after Bella and Flora or that Ms Walters cannot look after Poppy. • The range of powers available to the court • There are a range of orders available to the court if an order is considered necessary.	

- The court will decide this application in accordance with the welfare principle. As the parents are in dispute It is likely that the court will make an order (no order principle) and issue a CAO to confirm that Bella and Flora will make regular visits to stay with their father.
- An order should be applied for as soon as possible to minimise the uncertainty which will affect the children (no delay principle)
- It is likely that the court will agree to issue a CAO and to ensure the involvement of both parents in the lives of both children (principle of parental involvement)

Question 3(c)	5 marks
Candidates knowledge of Family Assistance Orders was very limited. .	
Suggested Points for Response:	
• Court may decide to make a family assistance order, s16 CA 1989 in this case in order to assist the Mr Potter and Ms Walters in reaching an effective resolution • A CAFCASS officer can be instructed to advise, assist etc any person named in the order e.g. Richard, Emma and the children • This is a voluntary order and cannot be made unless all the parties agree • It normally lasts for a maximum of 6 months but can be extended. • In this case, it appears that Richard and Emma are not able to work together to find a solution regarding visits by Bella and Flora to see their father - this order would put in place an arrangement that should help them	

Question 4(a)	6 marks
Whilst candidates generally were able to identify non-molestation orders and occupations orders, the level of marks achieved depended on the detail that was provided.	
Suggested Points for Response:	
• A non-molestation order under S42 Family Law Act (FLA) 1996 which will prohibit the Mr Roberts from molesting the Ms Harris or Matthew and an occupation order under s36 FLA to prohibit Mr Roberts from being in the flat and allow Ms Harris to return with Matthew • S36 occupation order required as flat is in sole name of Mr Roberts, but Ms Harris is a co-habitant with no existing right to occupy • In Ms Harris 's case, she needs protection from Mr Roberts who has been physically violent and has also been threatening Ms Harris (phone messages) and Ms Harris is increasingly fearful for her own safety and that of the Matthew. She needs somewhere to live • A non-molestation order will have a power of arrest attached so that the police will automatically respond if notified of a breach • An occupation can have a power of arrest attached if there has been violence or threats of violence, s47 FLA 1996 • An application without notice should be applied for as there is concern that Ms Harris and Matthew will be at significant risk of harm from Mr Roberts if he learnt of an application • An application form FL401 should be completed and filed with the Family court together with a statement by Ms Harris justifying why it is without notice • There is no fee for this application	

Question 4(b)	20 marks
This question produced a mixed performance. Candidates who were well prepared were able to identify factors to be considered in relation to an application for a non-molestation order and then for an occupation order, both the balance of harm test and the factors. Candidates achieved lower marks where they failed to show the knowledge required in sufficient detail.	
Suggested Points for Response:	
- To make the application without notice under section 45 FLA we must prove to the court that M/s Harris and Matthew are at risk of significant harm if the order is not made immediately. - Alternatively, we can rely on the fact that M/s Harris will be deterred or prevented from pursuing the application if the order is not made immediately - Given Mr Roberts s behaviour it is likely that the court will grant one or both of the orders applied for without notice	
Non-molestation order: - Under section 42 FLA 1996 the court will take into account all the circumstances of the case including the need to secure the health, safety and wellbeing of Ms Harris and Matthew - There is a history of verbal abuse, and the episodes of violence that have become increasingly serious - Ms Harris can therefore demonstrate a genuine need for protection and in the circumstances the court will grant a non-molestation order	
Occupation order - The court will firstly apply the balance of harm test under section 36(7) FLA 1996 - Court will consider whether if the order was not made Ms Harris or Matthew would be likely to suffer significant harm and if the answer to this question is yes - Then the court will make the occupation order, unless the court finds that Mr Roberts is likely to suffer significant harm if the order is made and that the harm suffered by him is as great or greater than the harm attributable to him and suffered by Ms Harris if the order is not made - Here Ms Harris is likely to satisfy this test as if the order is not made, she will either suffer further violence or have to find somewhere else to live. This will be greater than the harm suffered by Mr Roberts, as if the order is made he will simply have to find somewhere else to live and his parents live close by - If the court had doubts about whether the balance of harm test was satisfied then they would go on to consider the factors in section 36 (6) FLA 1996: the respective housing needs and housing resources of the parties and any child - Ms Harris 's needs are greater. She is the main carer for Matthew and she has nowhere else to go as her mother's home is a one-bedroom flat. Mr Roberts can stay at his parent's home. - Ms Harris would be considered to be unintentionally homeless and would thus obtain priority on the local authority's housing list, whilst Mr Roberts would be regarded as intentionally homeless as he is employed and there appears to be no reason why he can't move into his parents' home in the meantime the respective financial resources of the parties - Ms Harris's needs are greater as she is currently not but is full time carer for Matthew. Mr Roberts is working the likely effect of any order or of any decision by the court not to make such an order on the health, safety and wellbeing of the parties and child - Here if an order were not made it would have an adverse effect on Ms Harris and Matthew as they need to be protected from Mr Roberts violence and threats	

- **the conduct of the parties in relation to each other and otherwise**
- Mr Roberts has been verbally and now physically abusive and has threatened Ms Harris. It is very likely that the court will grant the occupation order on the facts of this case
- Conduct
- Nature of relationship
- Length of time of relationship
- Whether there are any children
- Length of time been apart
- Any pending proceedings
- If the court believes Ms Harris's version of events, then they must also grant a power of arrest under section 47 FLA to the occupation order as Mr Roberts has used and threatened violence against Ms Harris