CHIEF EXAMINER REPORT

JANUARY 2026

LEVEL 6 UNIT 21– PROBATE PRACTICE

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
Detailed knowledge of probate practice rules and Inheritance Tax was much improved. However, one general area which still requires improvement is knowledge of post grant probate practice as questions on this very important area in practice were answered less effectively by candidates. Candidates are reminded that this is a practice paper and detailed knowledge of the tax forms and forms used to obtain a Grant of Representation is expected in exam answers. Candidates are also reminded that they must have familiarity with all potential topic areas to be examined.

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	20 Marks
Many candidates demonstrated a good knowledge of why no IHT would be payable by Andrew's estate and those who had studied the CSM well and had a good knowledge of GROBs achieved high marks for this question. However, many candidates were also unable to explain why the estate satisfied the conditions for his estate being an **exempt excepted** estate in addition to no IHT being payable.	

Suggested Points for Response Question 1a:

- An exempt excepted estate is one in which there is no liability for Inheritance Tax (IHT)
- The gross value of the estate is less than £3,000,000
- And after deducting the spouse exemption and / or the charity exemption the value of the estate is no higher than the IHT nil rate band threshold
- Other relevant specific conditions are that the gift to any charity is absolute
- The deceased made no chargeable transfers in the seven years before death
- The deceased had made no gifts with a reservation of benefit (GROB) where the reservation continued in the seven years before his death
- The deceased died domiciled / resident in the UK
- Andrew's estate did not include any trust assets, and he did not have an alternatively secured pension fund.
- To calculate the gross value of Andrew's estate for IHT purposes you must include all property passing under his Will,(£1,216,995) including
- Any joint property and any life interests (Andrew had none)
- And any chargeable lifetime gifts, which include failed Potentially Exempt Transfers (PET) and GROBs

<u>PETs</u>

- Andrew made two lifetime gifts one each to Cleo and David
- A gift which is a PET at the time it was made will not be a chargeable transfer if the transferor survives for at least seven years after the transfer is made
- However, a transfer will not qualify as a PET if the transferor reserves a benefit in it such as continuing to live in property that is transferred without paying a market rent or receiving the income from any investments transferred (credit any correct example of a GROB)
- When Andrew transferred the chateau to Cleo in September 1997 he continued to divide his time between the chateau, where he continued to use his old room, and Midshaw Manor and this will be seen as a GROB
- So would not qualify as a PET at that point
- However once Andrew no longer visited the chateau from July 2014 the GROB no longer existed and could be seen as a PET of £600,000
- And as Andrew survived for 10 / 11 / more than seven years after this the gift would not be a chargeable transfer
- And would not form part of Andrew's gross estate for IHT purposes.
- When Andrew transferred Midshaw Manor to David in November 2014 this was also a GROB which was lifted in August 2017 when Andrew moved into Midshaw Cottage which he rented (at a market rent) from David
- At this point it became a PET of £1,800,000 and as Andrew survived for 7 / 8/ more than seven years
- The gift would not be a chargeable transfer nor form part of Andrew's estate for IHT purposes.

Taxable estate

- The gross value of Andrew's estate would only consist of the assets passing under his Will, £1,216,995, and so is under £3,000,000
- The legacies of £325,000 free of tax to both Cleo and David would benefit from Andrew's £325,000 Nil Rate Band (NRB)
- And the unused NRB of Barbara, Andrew's deceased spouse as Andrew received all of her estate
- It does not matter when she died the amount is equal to the relevant NRB at the date of Andrew's death
- Andrew's estate is therefore entitled to have the first £650,000 of the chargeable gifts in his Will taxed at 0%

Charitable gifts

- The gifts of residue to the National Trust and RSPB were not subject to any conditions so were absolute
- Gifts to charities are exempt to an unlimited amount from IHT (as are those to national bodies such as the National Trust)
- So no IHT will be due on the residue of Andrew's estate either

Domicile / Residence

- Andrew had been resident in the UK since at least 2014 / for the last 10 years so will be classed as a UK resident / he appears to be domiciled in the UK as his main residence had always been at Midhurst Manor or later at Midhurst Cottage.

Conclusion

- As Andrew's estate has met all of the above conditions his estate will be an exempt excepted estate and no IHT forms will need to be submitted before an application for a Grant of Probate is made

Question 1b	10 marks
Data too limited for valid feedback.	
Suggested Points for Response Question 1b:	

- Kempstons as executors of Andrew's estate will need to make an online application for a Grant of Probate to his estate and the information that will need to be provided as part of this application will include:
  - Personal information about the applicants, namely the full names, addresses, phone numbers and emails of the executors named in Andrew's Will, which will be the individual partners in Kempstons who are applying
  - Then they will have to give details of Andrew's full name and address, his date of birth and date of death
  - Confirmation of whether he died resident / domiciled in England and Wales and his marital status
  - Then the court will require details of any foreign assets he held, including his Credit Agricole Savings account or any settled land he held.
  - The next information is just to ask what type of application a legal professional is requesting, namely a Grant of Probate
  - Question 3 on the application form requests information about Andrew's Will including the date of the Will, 16 September 2018, whether there are any overseas Wills and whether Andrew married or entered a civil partnership after he made the Will
  - The court will also require the names of executors who are named in Andrew's Will but who are not applying for the Grant and in Andrew's case this will mean the partners to whom power is to be reserved with confirmation that the applying partners have given notice to the partners with power reserved
  - Then the court requires information about whether Andrew had a spouse and / or surviving children or grandchildren, and the relationship of the applying executors to him. Andrew has Cleo his daughter and David his son
  - The court also requires information about any Inheritance Tax forms which have been submitted. As Andrew's estate is an exempt excepted estate no form is submitted but the court still requires information about the gross and net values of his estate for probate purposes

Question 2a	10 Marks
Data too limited for valid feedback.	
Suggested Points for Response Question 2a:	

<u>Validity of Fyodor's Will</u>

- Fyodor made a valid Will on 14 July 2018 although a decree absolute was made dissolving his marriage to Galina on 12 September 2025
- Under s18A Wills Act 1837 where a testator has made a Will and afterwards a court has dissolved his marriage
- The provisions of the Will appointing executors and trustees where a former spouse is appointed are treated as if the former spouse had died
- On the date on which the marriage is dissolved
- And any property which is left to the former spouse will pass as if the former spouse had died on that date.
- <u>Conclusion</u> that Fyodor's Will has not been revoked / is still valid
- But that Galina is treated as if she had predeceased Fyodor on 12 September 2025 when interpreting the Will

<u>Application of Fyodor's Will</u>

- Galina is not entitled to act as an executor of Fyodor's estate nor is she entitled to any beneficial interest in the estate.
- Fyodor's Will appointed Kempstons in addition to Galina as the executors and trustees of his Will
- So (two of) the partners in Kempstons should apply for a Grant of Probate to his estate.
- As Fyodor's Will named his sister Irina as a substitute residuary beneficiary in the event of the gifts to Galina failing for any reason
- Irina will be entitled to all of Fyodor's residuary estate (subject to payment of his debts, funeral and testamentary expenses)

Question 2b	5 marks
Q2b on professional conflicts of interests answered well by the majority of candidates.	

Suggested Points for Response Question 2b:

- When acting in the administration of an estate the clients of a firm are the personal representatives of the deceased / the firm owns a duty of care to the PRs
- As the partners in Kempstons have been appointed as executors and trustees of Fyodor's estate Kempstons cannot accept instructions from anyone other than the partners
- In particular Kempstons must be alert to conflicts of interest which might arise and cannot accept instructions from anyone who has a potential conflict of interest with the administration of Fyodor's estate
- As Holly has a potential claim against the estate (in her own right or on behalf of her unborn child) she has a conflict of interest with the estate, and we cannot accept instructions from her
- Although we should advise her to obtain independent legal advice about Fyodor's estate

Question 2c	15 marks
Q2c was answered well in general. However, some candidates could have obtained even better marks by considering Galina's potential claim as a former spouse who has not remarried and by considering the last part of the question on how the PRs could protect themselves from personal liability.	

Suggested Points for Response Question 2c:

Claimants and categories

- Galina would be able to make a claim against Fyodor's estate under s1(1)(b) of the Inheritance (Provision for Families and Dependants) Act 1975 (I(PFD)A 1975)
- Because she is a former spouse of Fyodor who has not remarried
- Holly would be able to make a claim against Fyodor's estate under s1(1)(e) of the I(PFD)A 1975
- As a person who immediately before the death of the deceased was being maintained either wholly or partly by the deceased
- Fyodor was partly maintaining Holly by paying her energy and water bills
- Fyodor and Holly's unborn child would be able to make a claim against Fyodor's estate under s1(1)(c) of the I(PFD)A 1975
- All claims would be made on the basis that the disposition of Fyodor's estate has not made reasonable financial provision for the applicant

Matters court would take into account

- Under s3(1)(a-c) for Galina, Holly and the unborn child the courts would look at the financial resources and needs the applicant, any other applicant and any beneficiary has or is likely to have in the foreseeable future
- Under s3(1)(d-g) the court would also look at Fyodor's obligations and responsibilities towards any applicant or beneficiary, the size and nature of his estate, any physical or mental disabilities of any applicant or beneficiary and any other matter including the conduct of the applicant or any other person, which in the circumstances of the case the court may consider relevant
- Under s3(2) the court would also consider the age of Galina, the duration of her marriage to Fyodor and the contribution she had made to the welfare of the family including looking after the home or caring for the family
- For Galina we do not know how old she is but she was married to Fyodor for 10 years and had made no particular contribution to the welfare of the family as they had no children and she went out to work in a similar job as Fyodor
- Also for Galina we know that her financial resources will be significant as she will be entitled to the whole of the beneficial interest in 6 Heron Drive as the right of survivorship will apply as she and Fyodor owned the property as beneficial joint tenants
- Galina also has a good job so is financially secure so any claim she may make is not likely to be successful
- This will be worth approximately £265,000 and the mortgage will be paid off by the joint life assurance policy
- Holly does not appear to have any financial resources, and her needs will be increasing as she will be on maternity leave in three months' time and will have to bring up her child without Fyodor's help
- The new baby has no financial resources, receives nothing under the terms of Fyodor's Will and Fyodor's obligations and responsibilities towards him are great as they are to Holly
- The court will also consider the fact that Irina as the residuary beneficiary of Fyodor's Will will only receive the contents of his bank account and his Ford Puma car

Protection of PRs

- Once they have been notified of a potential claim against the estate PRs should not distribute the estate until the claim has been resolved
- Potential claimants have six months to make a claim from the date the Grant of Probate is issued
- So, if no one has made an application to the court for financial provision after this date Kempstons as executors can complete the administration of Fyodor's estate
- As claimants have a further 4 months in which to serve a claim it is sensible for the PRs to wait for 10 months after issue of the grant before making any distribution.
- Even if a successful application is made to allow an application out of time the executors will not be liable even if the claim is successful
- However, if a claim is made the estate should not be distributed until the claim is resolved or Kempstons as executors will be personally liable for claims that can no longer be paid out of the estate.
- The PRs could also seek to obtain insurance for distribution of the estate

Question 3a	8 Marks

Q3a was answered very well by a quarter of the candidates. However, many candidates incorrectly thought that a Grant de Bonis Non would be appropriate, when in fact that would only have been appropriate if Keith had already taken out a Grant of Probate to James' estate before he also died even though Keith left a Will appointing an executor who proved that Will.

Suggested Points for Response Question 3a:

- If Lena renounces her right to Probate there would be no executor who could take out a Grant of Probate to James' estate as Keith the other appointed executor has died. Even though he did survive James
- R20 of the Non-Contentious Probate Rules 1987 (NCPR) would then apply to set out the entitlement to a Grant of Letters of Administration with the Will Annexed
- There would be no executor or trustee of residue
- and if Lena renounces she would also renounce her right to be appointed in her capacity of residuary legatee
- As Lena is alive there is no PR of a residuary legatee
- The next (5^{th}) category is any other legatee which would include Nathan and Paula
- As Paula is under 18 she cannot apply but as she has a minority interest in the estate a minimum of two administrators will have to be appointed
- Therefore, Nathan could apply for a Grant and he could nominate another family member to act as co-administrator, probably his mother Marie

Question 3b	7 marks

Most candidates did not recognise that although this was a solvent estate there were insufficient assets to pay all of the liabilities and the legacies left by the Will. It is s35 (and not s34) of the AEA 1925 that sets out the order in which debts and legacies are to be paid in these circumstances.

The two secured loans (mortgage and motor finance loans) could have been handled more effectively, although some credit was given to the significant number of candidates who treated the car loan as an unsecured debt.

Suggested Points for Response Question 3b:

- James' estate is a solvent estate as his assets are sufficient to pay all of his debts funeral and testamentary expenses
- Under s35 Administration of Estates Act 1925 (AEA 1925) secured creditors are entitled to be paid first out of assets on which their debt has been charged
- This means that Flat 2a, The Circle, Bedford should be sold to repay the mortgage to the Bedford Building Society as the mortgage debt was secured on the property / the term life assurance policy will be used to pay off the mortgage
- And James' Ford Puma car should be sold to repay the finance loan to Black Stallion Motor Finance as the car loan would be secured on the car
- This is so even though the car was a specific gift in James' Will to Keith
- As James' Will has made express provision setting out the order in which his property should be used to pay his debts, by directing that they should be paid out of his residuary estate (so s 34(3) AEA 1925 will not apply)
- Which will firstly be his funeral and testamentary expenses
- Followed by his utility and council tax bills
- As James owned a car at the date of his death the specific gift to Keith did not adeem, even if it is taken to repay the car loan
- The equitable doctrine of marshalling will apply so that Keith's estate receives the monetary value of the car as James had directed that his residuary estate pay his debts if the car is taken by the finance company

Question 3c	5 marks

Q3c required detailed knowledge of how PRs can obtain good receipts for legacies given to minors. However, knowledge amongst most candidates was very general.

Suggested Points for Response Question 3c:

- James' Will did not give his personal representatives any specific powers to deal with the legacy he left for Paula
- Paula cannot give a good receipt for her legacy as she is a minor / under 18
- However she is absolutely entitled to the legacy as there was no age contingency mentioned in James' Will for her to satisfy before she is entitled to the legacy
- And under ss3 and 5 Children Act 1989 parents with parental responsibility can give good receipts for legacies on behalf of their children if the child is absolutely entitled to it
- Therefore, Marie could give a good receipt for Paula's legacy

Question 4a	15 Marks
Q4a was answered well by the majority of candidates.	

Suggested Points for Response Question 4a:

<u>Receiving the residue of James' estate</u>

- If Lena were to accept the residue of James' estate it would increase the value of her own assets and this would take her estate over the IHT threshold
- Lena could make lifetime gifts to Nathan and / or Paula using this money which would be potentially exempt transfers (PETs) and not liable for IHT
- But only if Lena survived for more than 7 years after making the PETs
- Lena would also be able to make use of her annual allowance and the small gifts exemption
- Accepting the residue would have the advantage to Lena of giving her more funds to boost her income and giving her more of a contingency fund for the future
- As although the value of her property is high her savings are relatively small

<u>Disclaiming her interest in James' estate</u>

- If Lena were to disclaim her interest in James' estate her estate would not increase in value so as to increase the IHT payable on her death
- However, Lena would then have no control over who James' estate passed to
- And she would be treated as if she had predeceased James
- Keith did survive James so the gift to him would not lapse, and his estate would be absolutely entitled to the residue of James' estate
- Which would mean it would pass to Marie under the terms of Keith's Will rather than to Nathan and / or Paula as Lena wants

<u>Varying the terms of James' Will</u>

- If Lena were to vary the terms of James' Will it would give her much more flexibility as she could direct the entire residue of James' estate to Nathan and Paula
- Or she could increase the legacies to Nathan and Paula which could also leave her with a smaller amount of residue to ensure she has sufficient funds for her future
- She could add an age contingency so that Nathan and Paula were not entitled to the monies until they were 21 or even older
- And she could add administrative clauses including adding minor receipt clauses and extending the trustees administrative clauses rather than relying on those in the AEA 1925 and / or the Trustee Act 2000
- Lena would also be able to enter into a Deed of Variation of the Will which would have the effect of treating the changes to James' Will as if he had made them himself rather than Lena for IHT purposes provided certain conditions are met
- Under s142 Inheritance Tax Act 1984 the conditions are that the deed of variation must be made within two years of James' date of death
- It must be in writing
- No consideration must be given for the variation
- And it must contain a statement that s142 is to apply

Question 4b	5 marks
Q4b required application of the RNRB rules which almost all candidates recognised.	
Suggested Points for Response Question 4b:	

- The residence nil rate band (RNRB) is designed to reduce the transferable value of Lena's estate if her residence, 42 River Road, Cambridge, is closely inherited provided certain conditions are met
- The maximum value of RNRB that Lena's estate will be able to apply for is £175,000, even though her property is worth £455,000
- Lena's estate must be no more than £2.35 million which it is (and the value of it tapers if the estate is more than £2 million)
- The property must be closely inherited which means that it passes to a lineal descendant (or someone connected to a lineal descendant)
- To be inherited the descendant will receive the property by Will, under the intestacy rules or by survivorship
- Nathan and / or Paula are lineal descendants of Lena as they are her grandchildren
- So provided Lena leaves it to at least one of them in her Will or the intestacy rules apply Lena's estate can qualify for the RNRB which will reduce the IHT payable on her estate