CHIEF EXAMINER REPORT

JUNE 2025

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 June 2025 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 generally showed reasonable familiarity with the provisions of the CPR, and the names of the commonly used prescribed forms.

There was less familiarity with the RTA protocol, including the CNF, the Settlement Pack and the Court Proceedings Pack. This was surprising as the CSM had clearly signposted that these were likely to be significant when handling the claim in the first scenario.

There is still a tendency to answer questions relatively generically, rather than focusing on those aspects which are flagged up by the specific facts. This applies in particular to Q 1 (b) and Q3 (b) and (c).

Candidates also need to read the actual questions more carefully. This was no doubt the reason for many answers to Q1 (a) not focusing on the research which should have been undertaken.

There was no significant evidence that candidates had any difficulty with time management, although there still seems to be a limited recognition that the number and complexity of the issues in question is likely to be linked to the number of marks allocated.

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 has not been included.

Question 1a	5 marks
This question required candidates specifically to consider how they should have researched the quantum of the claim, and answers should have clearly identified the Judicial College Guidelines, and precedents found through legal databases and Kemp & Kemp. Most identified the JCG. Some good answers indicated that the research had actually been undertaken as relevant figures were provided, although no candidate identified that where there were, as here, multiple injuries, allowance had to be made for this when assessing the overall figure.	
Suggested Points for Response:	
• Research in the Judicial College Guidelines • and/or research in Kemp & Kemp. • Each provides an indication of the level of damages applicable to a wide range of injuries. • The JCG are regularly updated to allow for inflation. • Kemp & Kemp uses precedents from decided cases and also settlements reported by the practitioners concerned. • In each case it will be necessary to make allowances for the fact that there are several distinct injuries so the overall award will not be found by adding the amount for each separate injury but the overall pain and suffering.	

Question 1b	8 marks
This question required advice on potential funding methods to a client who was known to be retired and to have quite substantial savings. Some candidates nevertheless provided a fairly generic answer showing no real consideration of the circumstances, including reference to Trade Union funding (although one or two did indicate that this would only be relevant if the client had maintained a retired membership). Better answers did indicate that while the client could clearly afford private funding for a claim of this kind, it might not be advisable. The availability of a CFA was generally acknowledged although the quality of discussion and explanation of exactly what this entailed was variable.	
Suggested Points for Response:	
• Advice to the client must always be based on what is in the interests of the client, rather than what is or may be in the interests of the lawyer. • This is a claim for personal injury so Qualified One Way Costs Shifting means that SM will not be liable for the defendant's costs (unless e.g. the claim is pursued dishonestly). • Given that SM has substantial savings, he could fund the claim privately but would be liable for Kempston's costs insofar as these are not covered by the defendant. • Alternatively he could consider a Conditional Fee Agreement. • He will not be liable for costs unless he is successful, but if he is successful, Kempstons will be entitled to a success fee, calculated as a percentage uplift on their actual costs, although given the nature of this claim this is likely to be relatively modest, and in any event cannot exceed 25% of the damages awarded. • A Damages Based Agreement could also be considered. It is similar to a CFA but the success fee is calculated as a proportion of damages and is again capped at 25%. • After the Event Insurance could be considered in relation to disbursements, but again, SM may consider bearing these himself in the event that they are not recoverable from the defendant.	

Question 1c	10 marks
This question requires consideration of the process of obtaining a witness statement from a witness known to be Polish, as well as the content of the statement and formal requirements. A significant number of candidates did recognise that there was a potential language issue and that, if this were the case, the statement should be taken in Polish and then formally translated. Most candidates recognised that it was important that the statement should represent the witnesses own words, and were able to explain what the formal requirements were in terms of setting out the statement and the information about the circumstances that needed to be included. There was less consideration given in answers to issues of content, and the number failed to mention that there was hearsay which could legitimately be included, but that there was opinion evidence (as to responsibility for the accident) which needed to be excluded.	
Suggested Points for Response:	
• It will be necessary to contact MO and obtain confirmation from him of his personal details and what he can say. • In relation to substance, the statement should either be drafted by him or specifically approved by him. • It should be in the first person and should confine itself to the facts which he observed. • Here he can say that he saw the accident occur when the defendant drove onto the crossing and collided with the claimant when the lights were green in favour of the claimant and red against the defendant. • He can also recount the conversation he had with the defendant in which the defendant admitted not noticing the red light at the crossing and concentrating on the second light further ahead. • He cannot give his opinion as to responsibility for the accident. • Formal requirements are governed by CPR 32.8 and PD 32 (and also CPR 22 which requires a statement of truth). • The statement must bear the heading of the proceedings. • The following details must be at the top right hand corner: • the party on whose behalf it is made, • the initials and surname of the witness, • the number of the statement in relation to that witness, • the identifying initials and number of each exhibit referred to, • the date the statement was made; and • the date of any translation. • The manner in which the statement was produced must be included. Full personal details of the witness are required. • The statement must be paginated and in numbered paragraphs. • It must be in the language of the witness. Consider here whether MO should make a statement in Polish which can then be translated.	

Question 1d	5 marks
Most candidates were able to identify that this should be allocated to the fast-track if necessary. There was some confusion over the precise financial limits, and only a minority identified that the claimant would be classed as vulnerable and therefore the lower fast-track limit was £1000.	
Suggested Points for Response:	
• Allocation is governed by CPR 26. • This case is above the small claims track limit as it is a claim for personal injuries valued at more than £1,000 involving a vulnerable victim (as the claimant was using a mobility scooter) (CPR 26.10 (c) (iii) and CPR 26.9 (1) (bb)). • It would normally be allocated to the fast-track as it is within the fast-track limit of £25,000 and there is nothing to suggest that any of the factors which might lead to that limit being disregarded might apply. • The case will initially fall within the Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents from 31 July 2013. • The same considerations as to value as are set out above are relevant.	

Question 2a	12 marks
Most candidates showed a reasonable familiarity with the CNF, although a small minority seemed to think that they were dealing with either a letter of claim or a claim form. The quality of answers varied, largely because some candidates only focused on the three sections highlighted, whereas the question made it clear that they should consider the whole CNF with an emphasis on those sections. In relation to the circumstances of the accident the time and location were normally given but the weather conditions and road condition were often omitted. The description of the accident was largely taken from the CSM. Liability was generally not well discussed. What was required was the factors on which the claimant would rely to show that the defendant was negligent namely failing to keep a proper lookout and failing to comply with a red light.	
Suggested Points for Response:	

• The CNF requires the following information:
  • Details of the claimant's representative and of the defendant, his vehicle and insurance.
  • Full details of the claimant.
  • Details of the nature of the injury sustained and any treatment.
  • Any rehabilitation issues.
  • Details of the damage to the mobility scooter.
• The accident details in this case need to specify that the claimant was riding a mobility scooter.
• The accident time, location and description should include the date of 4 October 2024, the time of 3:30p.m, the location namely the junction between Cardington Road and Millington Road in Bedford, that weather conditions were sunny and the road condition was dry.
• The accident occurred when the claimant was proceeding on his mobility scooter across a light controlled crossing with the lights green in his favour. The defendant drove onto the crossing and collided with the left side of the mobility scooter at approximately 15mph. The claimant's left hand was trapped between the front of the van and the tiller of the scooter. The tiller was damaged as was the front of the van.
• Details of any police report should also be included.
• Details of the witnesses should be provided.
• In relation to liability, the claimant believes the defendant is responsible because the defendant negligently failed to keep a proper lookout and in consequence failed to stop at the red light controlling the crossing and entered the crossing colliding with the claimant.
• Details of any relevant funding arrangement, e.g. a CFA or ATE, must be supplied.
• A statement of truth is required.	

Question 2b	8 marks
Most candidates identified the purpose of the Settlement Pack, at least in general terms, and that it needs to contain the medical report and other evidence relevant to quantum. The need for it to include the claimant's offer was relatively rarely mentioned, and the timescale was not discussed. Many candidates failed to make any reference to payment of Stage 1 costs. Weaker candidates showed only a limited understanding of Stage 2.	
Suggested Points for Response:	
• As liability has been admitted the claim will move from Stage 1 to Stage 2 of the Protocol which enables the parties to agree quantum. • The Settlement Pack is intended to contain all the information necessary to enable the quantum of the claim to be negotiated. • It will include: the claimant's offer to settle, a medical report, any other relevant evidence, including evidence of pecuniary loss (in this case the £1,000 remuneration for marking which was lost • and the cost of repair of the mobility scooter) and the cost of disbursements. • A period of 35 days is initially provided for in the Protocol, 15 days for the defendant to consider the Settlement Pack and 20 days for negotiations, but this can be extended by agreement between the parties. • Stage 1 fixed costs must be paid no later than 10 days from delivery of the Settlement Pack. • There is provision for interim payments where further medical evidence is required, but this does not appear to be relevant here.	

Question 2c	10 marks
Very few candidates demonstrated a full and clear understanding of this stage of the proceedings. Only a minority referred to the need for the defendant to pay over the amount of its final offer. A similar minority referred to the need to pay Stage 2 fixed costs and disbursements. Rather more did refer to the Court Proceedings Pack, but often without providing full detail of what this contained and its division into Part A and Part B.	
Suggested Points for Response:	
• The defendant must pay to the claimant the amount of the final offer made by the defendant during Stage 2. • The defendant must also pay any outstanding Stage 1 costs, the Stage 2 fixed costs as per PD 45 and disbursements. • The claimant sends to the defendant a Court Proceedings Pack containing a final schedule of the claimant's losses, the defendants responses and comments and evidence from the parties on the disputed heads of damage. (Part A) • It must also contain the final offer and counter offer from the Stage 2 Settlement Pack Form. (Part B) • The case will now move to Stage 3 which is governed by PD 49F. • This involves a modified Part 8 claim. • The claimant must serve a claim form requesting the court to determine the amount of damages. • The claim form must confirm that the Protocol has been followed. • The claimant must specify whether he wishes the claim to be determined by the court on the papers or at a Stage 3 hearing. • A copy of the Court Proceedings Pack must be filed with Part B sealed. • A copy of medical reports and other evidence must also be filed. • If the case is determined on the papers the court will give reason in the judgment. • Any appeal against a decision on the papers must be made to the relevant appeal court.	

Question 3a	9 marks
No candidate referred to the PD (PACP). There was good general awareness of the overriding objective and therefore the strong steer towards ADR where appropriate. A reasonable number of candidates also recognised the possible costs implications. Discussion of ADR was usually appropriate and focused on mediation and/or negotiation. A small number inappropriately suggested arbitration.	
Suggested Points for Response:	
• This claim is not governed by any of the specific Pre-Action Protocols. • The Practice Direction (Pre-Action Conduct and Protocols) sets out the general objective in relation to interaction between the proposed parties in accordance with the overriding objective. • It encourages the parties to consider ADR. • ADR such as mediation may enable the parties to reach a negotiated settlement and thus avoid litigation costs. • Under CPR 44 the normal rule is that costs will follow the event, but they are at the discretion of the court (CPR 44.2) and the court may take into account the conduct of a party, including any unreasonable refusal to engage in ADR (CPR 44.4 and 44.5 (e)). • A Part 36 offer is an offer to settle a claim and can be made at any stage, even before proceedings have been commenced. • The offer will not be disclosed to the judge hearing the case until after judgment has been given. • The offer must comply with the procedural requirements of Part 36. It must initially be open for at least 21 days but may subsequently be withdrawn or varied. • If the offer is accepted within the 21 days the claim will be stayed and the defendant will have to pay the amount offered within 14 days. The claimant will also be entitled to costs up to the date of acceptance. • If the offer is accepted late a split costs order may be made with the claimant paying the defendant's costs arising later. • If the offer is rejected and the claimant obtained judgment which is at least as favourable, there will normally be no costs consequences. • If the claimant fails to beat the offer, the court will normally (unless it considers it unjust to do so) award the defendant costs from the date when the 21-day period of the offer expired together with interest on those costs.	

Question 3b	6 marks

Most candidates recognised that a step should be taken under Part 20, although some got very little further than this. A minority actually looked at what the legal position was, but only a minority of these recognised that the client would be contractually liable even if the actual fault in relation to the vehicle was the responsibility of the additional party. Relatively few clearly identified that the appropriate step was to bring CTA in as a third-party through an additional claim for a contribution or indemnity, or exactly what the procedure was, including that leave was not required if this was done before or at the same time as filing the defence to the original claim.

Suggested Points for Response:

- Although the client now has evidence suggesting that the claim is misconceived, this evidence is not conclusive.
- The contractual claim by Avalon Consultants Ltd is against the client. If it succeeds in relation to the defective steering rack and/or misaligned engine block, it is arguable that Clock Tower Autos Ltd is in breach of contract and the client is entitled to a contribution or indemnity.
- This could form the subject of separate proceedings, but it is convenient to make an additional claim, bringing Clock Tower Autos Ltd in as a third-party.
- The appropriate procedure is to commence an additional claim under CPR 20.7.
- A claim form must be issued and served on the third-party together with particulars of the additional claim.
- This may be done without leave if the additional claim is issued before or at the same time as the defence to the original action is filed.

Question 3c	7 marks

Most candidates recognised that this was an application to set aside pursuant to Part 13. Given that there was no indication that there was any irregularity the focus should have been on Part 13.3. Good answers did recognise that the defendant would have to show an arguable defence or some other good reason why judgment should be set aside and was in effect seeking relief from sanctions so the Denton criteria should apply.

Suggested Points for Response:

- It appears that judgment in default of defence has been properly entered pursuant to CPR 12.3.
- This assumes that, following the acknowledgement of service, the time for service of the defence had expired.
- An application can be made for judgment to be set aside pursuant to CPR 13.
- Judgment must be set aside pursuant to CPR 13.2 if it was obtained irregularly.
- This would apply if the judgment were applied for prematurely.
- Judgment may be set aside pursuant to CPR 13.3 in any other case if the court is satisfied the defendant has a real prospect of successfully defending the claim or there is some other good reason why the judgment should be set aside or varied or the defendant be allowed to defend the claim.
- The promptness of the application is a relevant consideration.
- Although not in formal terms an application for relief from sanctions similar considerations apply.
- The court will therefore consider the Denton criteria.
- How significant is the failure to comply with CPR, what impact has it had on the proceedings and is there a legitimate excuse.
- Here the illness of the managing director is likely to be a significant mitigating factor.
- Having regard to the overriding objective, it may be appropriate to consent to the application, and this would in any event reduce the costs.

Question 4a	6 marks
The original claim was for a maximum of £13,000. Nothing has occurred since to indicate that this is no longer relevant, so candidates who suggested allocation to the intermediate or multitrack on the basis of value were clearly misconceived. Those who suggested doing so on the basis of complexity did not really have any material to justify this, particularly as the additional claim is stated to have been stayed pending conclusion of the main proceedings. Nevertheless the majority correctly identified the fast-track. Coverage of case management was somewhat patchy although better answers did consider standard directions.	
Suggested Points for Response:	
• Assuming that Avalon Consultants Ltd is claiming for the full amount as set out in their original letter, the value of this claim exceeds £10,000 but does not exceed £25,000 and it will therefore, pursuant to CPR 26, be allocated to the fast-track. • CPR 28 deals with the management of fast-track cases and pursuant to CPR 28.2 the court will give standard directions and set a timetable leading up to the trial. • These directions will cover discovery by lists and inspection of documents, exchange of witness statements and expert evidence. • There will be a standard pre-trial checklist and listing questionnaire: CPR 28.4. • The parties may apply for further directions.	

Question 4b	6 marks
Most candidates made some effort to consider the provisions of Part 35, but not always clearly enough applied. While it is true that a single joint expert would normally be considered in a fast-track case, there has clearly been a direction here that each party is allowed its own expert, and the court would not then require a single joint expert. The focus should have been on requiring the experts to meet and produce a joint statement as to what was agreed and not agreed.	
Suggested Points for Response:	
• The original directions will have provided for each party to adduce the evidence of one expert. • The reports of those experts should be exchanged. • Either party may put questions to the expert of the other party to clarify their evidence. • Where the experts are in disagreement, the court can order that they meet and produce an agreed statement of the matters on which they are in agreement or disagreement. • Oral evidence only with permission. • If the experts are to give oral evidence this can take the form of “hot tubbing” where the experts give evidence simultaneously and can respond to points made by the other expert. • The primary duty of the expert is to the court. • Credit sensible statements about direction for a Single Joint Expert.	

Question 4c	8 marks
Many candidates omitted the costs aspect altogether. Very few correctly identified that the starting point would be the fixed costs under Part 45 and PD 45, and would probably be complexity band 1, although these could be dis-applied and the court had an overriding discretion. The enforcement options were generally better handled, although there was rather too much emphasis on Part 71 and a significant number omitted the use of a statutory demand/winding up proceedings. Warrant of control, third party debt orders and charging orders were generally sensibly discussed.	
Suggested Points for Response:	
• In a case of this kind the starting point is the fixed costs under CPR 45 and PD 45. • This case is likely to fall within complexity band 1 as it is just over the fast-track lower limit, appears to raise one issue and is of limited complexity. • While costs are in the discretion of the court, even if the judge has assessed the costs as higher than the fixed costs, only the fixed costs will be payable if the difference is less than 20%. • If there were particular complexities, for example in relation to Part 36 offers, a detailed assessment might be ordered, but this is unlikely. • If the costs are not paid the usual procedures for recovery are available. • Use of a credit reference agency may be appropriate. • A statutory demand followed by winding up proceedings could prove effective. • Assuming Avalon Consultants Ltd is still trading, a warrant of control would allow possession to be taken of assets which could be sold if payment is not forthcoming. • A third-party debt order may be appropriate if there are credit balances at the bank. • A charging order can be obtained against any property, but while providing security the procedure for ordering sale is long winded. • Credit any sensible reference to the costs of the stayed action, e.g. by analogy to Bullock and Sanderson orders.	