



## **CHIEF EXAMINER REPORT**

**JUNE 2025**

**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 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

It would appear that there needs to be careful attention given to what level of preparation and revision is necessary in order to approach an examination in this subject effectively.

Many candidates need to study the CSM in sufficient detail and read the preamble to the various questions carefully. As a result, answers will take account of information which is known. For example, that the client could identify his cousin as being potentially liable in the first scenario but is unwilling to do so, or that there is sufficient information to do the legal aid means calculation for the same client. Answers should demonstrate application and not be generic. In relation to all three clients it would have made sense to review the sentencing guidelines to ascertain which categories their offences fell into. This was relevant to allocation in relation to the first scenario, to mitigation in relation to the second and to the availability of a Newton hearing in relation to the third.

Candidates need to expect that there will be a question similar to Q3(d) requiring an assessment of the overall strengths and weaknesses of a case and that as this carries a significant number of marks, it is going to require consideration of a number of issues. While some of these will only become fully clear as the QP evolves, many of them will have been flagged up in the CSM and candidates should be in a position to deal with them.

## 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)	7 marks
Data too limited for feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none"> <li>• There is an available suspect who denies involvement and an identification witness who claims to be able to identify him.</li> <li>• An identification procedure should be held unless the police consider that it is impracticable.</li> <li>• The preferred procedure is a video identification using VIPER/PROMAT.</li> <li>• These are considered to be the fairest as they have the least potential to produce false positives.</li> <li>• The witness will be shown standardised video footage of the suspect and eight comparators.</li> <li>• The suspect may refuse to cooperate, but evidence of this may be given.</li> <li>• The police may also proceed to an alternative, more problematic, procedure such as covert video or an informal group identification.</li> <li>• Our role is to ensure that the procedure is undertaken properly.</li> <li>• We would review the initial description given by the witness and ensure that the comparators are appropriate.</li> <li>• In this case we would ensure that the client is able to wash his hands and face to remove the dirt which might distinguish him from the other comparators.</li> </ul>	

Question 1(b)	7 marks
Data too limited for feedback.	
Suggested Points for Response:	
<p>The advantages are that:</p> <ul style="list-style-type: none"> <li>• the client does not expose himself to the possibility of self-incrimination or loss of self-control if he is answering questions in interview;</li> <li>• there is no danger of giving a mixed comment/no comment interview which normally makes a bad impression on the court;</li> <li>• the client can in effect determine the extent of his disclosure;</li> <li>• the client avoids the possibility of adverse inferences from failure to mention matters which are covered in the statement;</li> <li>• the client can control what is contained in the statement, in particular avoiding identifying his associate.</li> </ul> <p>The disadvantages are that:</p> <ul style="list-style-type: none"> <li>• any discrepancy between the statement and the case made at trial can be the subject of both</li> <li>• adverse inferences and</li> <li>• comment by the prosecutor;</li> <li>• the opportunity to give a more complete explanation is lost.</li> </ul>	

Question 1(c)	5 marks
Data too limited for feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none"> <li>• The application is submitted electronically to the Legal Aid Agency.</li> <li>• The merits test will be satisfied automatically if the case is sent to the Crown Court.</li> <li>• If the case proceeds in the magistrates court the claimant will need to demonstrate that the Widgery criteria are satisfied, but here there is a clear likelihood of a custodial sentence.</li> <li>• The means test involves the application of an initial test.</li> <li>• Gross income is subject to weighting for family unit members and in this case the weighting will be 2.24 (1.64 for a couple and 0.3 for each of the children).</li> <li>• Applying this to the £26,500 gross earnings produces a figure of £11,830.</li> <li>• As this is less than the maximum of £12,475 in the initial calculation, the means test is satisfied for the magistrates court and with a nil contribution for the Crown Court.</li> </ul>	

Question 1(d)	8 (max 5 for procedure)
Data too limited for feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none"> <li>• The hearing is a Plea before Venue followed by Mode of Trial/Allocation.</li> <li>• Initially the client will be asked how he would plead to the charge.</li> <li>• In the event of an indication of a guilty plea the court would proceed to sentence or committal for sentence to the Crown Court if it lacks the necessary powers of sentence.</li> <li>• In the event that no plea is entered or an indication of a not guilty plea is given (as will be the case here) the court will determine whether the magistrates court or the Crown Court is the more suitable venue.</li> <li>• There is a presumption in favour of summary trial.</li> <li>• The court will consider the factors set out in s 19 Magistrates Courts Act 1980.</li> <li>• The adequacy of the sentencing powers of the court is the primary consideration.</li> <li>• The court must regard the case as being at least as serious as it is represented to be by the prosecution.</li> <li>• The court will consider any available sentencing guidelines.</li> <li>• Here the guidelines for production of cannabis indicate that where the defendant has a leading role in what is at least a Category 2 operation in terms of harm the starting point is six years custody, so the magistrates will not accept jurisdiction.</li> <li>• The case will accordingly be sent to the Crown Court.</li> <li>• The court will consider issues relating to bail if necessary.</li> <li>• The court will also consider reporting restrictions.</li> </ul>	

Question 2(a)	6 marks
Data too limited for feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none"> <li>• This is a plea and case management hearing.</li> <li>• The defendant will be arraigned and enter a plea.</li> <li>• If the plea is one of guilty the case can be disposed of, but otherwise...</li> <li>• The court will consider any necessary directions.</li> <li>• A trial window or trial date will be set.</li> <li>• Any issues in relation to disclosure will be identified.</li> <li>• The court can consider bail, and in this case can consider a variation of bail conditions to allow the defendant to take up the offer of work in Scotland if this is considered to be appropriate.</li> </ul>	

Question 2(b)	5 marks
Data too limited for feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none"> <li>• The hearsay evidence of a witness who is unable to give oral evidence by reason of physical or mental unfitness is admissible under s 116 Criminal Justice Act 2003.</li> <li>• This applies where the oral evidence would have been admissible.</li> <li>• The witness must be suitably identified.</li> <li>• The statement in question is that Martin Harrison is in fact the person the witness originally understood to be Michael Hayes and is the tenant of the barn. The witness intends others to regard this as true: s 115 Criminal Justice Act 2003.</li> <li>• There is no obvious basis to exclude the evidence as neither s 114 (2) nor 116 (4) appear to apply.</li> <li>• An application could be made to exclude the evidence under s 78 PACE if it is regarded as having a sufficiently adverse effect on the fairness of the proceedings.</li> <li>• However it is difficult to see how that could apply.</li> </ul>	

Question 2(c)	5 marks
Data too limited for feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none"> <li>• The SRA Code of Conduct provides that you must not mislead the court (1.4).</li> <li>• This includes being complicit in others, including your client, misleading the court.</li> <li>• In this case the client and the witness both assert that they are giving honest evidence.</li> <li>• While you may have doubts, there is no conclusive basis for assuming that the court is being misled.</li> <li>• Accordingly there is no requirement to refuse to put this evidence before the court.</li> </ul>	

Question 2(d)	14 marks
Data too limited for feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none"> <li>• The prosecution bears the legal and evidential burden of establishing the elements of the offence.</li> <li>• Here it must establish that a class B drug, namely cannabis, was being produced and that the defendant was involved in its production.</li> <li>• It would appear that the prosecution has ample evidence of the cannabis grow, so the issue is whether they can prove that the defendant was involved.</li> <li>• There is eyewitness evidence that the individual calling himself Michael Hayes who rented the barn and paid the rent was the defendant.</li> <li>• This is disputed, so the <u>Turnbull</u> guidelines become relevant.</li> <li>• There is nothing to suggest that the circumstances of the identification are problematic. There was at least one conversation over a business transaction.</li> <li>• However, this was 12 months ago.</li> <li>• The general guidelines about the fallibility of identification are relevant.</li> <li>• It is nevertheless likely that the quality of the identification evidence will be regarded as good.</li> <li>• If not, it is capable of being supported by the other evidence in the case.</li> <li>• The prosecution is likely to be successful in an application to adduce at least the previous conviction for production of cannabis as being relevant to propensity: s 103 Criminal Justice Act 2003.</li> <li>• In interview the client did not refer to Ewan Gregory by name. It is unclear whether the written statement even referred to an associate, and if so in what terms.</li> </ul>	

- The prosecution may seek to invite the jury to draw adverse inferences.
- Ewan Gregory himself is liable to cross-examination on the basis of his own bad character in relation to his credibility as a defence witness.
- While the evidence of Alistair Reynolds about the black BMW SUV does not identify a specific vehicle, the fact that the defendant drives such a vehicle can amount to circumstantial evidence of involvement.
- Equally, the heat lamps which the defendant clearly delivered to the barn are capable of being used for a cannabis grow, and this is again circumstantial evidence of involvement.
- The use of the defendant's mother's address is also capable of being circumstantial evidence.
- The prosecution will need to demonstrate that the various elements are sufficiently cogent to satisfy the jury so that they are sure that the defendant was involved in the production of cannabis.
- The defence merely need to raise a reasonable doubt, and do not need to put forward a positive case.
- [Credit to be given to any sensible points on the legality of the search of the barn: s 18 and 32 PACE, but evidence unlikely to be excluded under s 78 PACE.]

Question 3(a)	5 marks
Data too limited for feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none"> <li>• PACE Code C provides that an appropriate adult should be provided for any vulnerable detainee.</li> <li>• This includes anyone who is suspected of having a mental health condition or mental disorder.</li> <li>• The giving of the address as being the halfway house, and/or the presence of the antidepressant medication should have aroused the relevant suspicion.</li> <li>• There has clearly been a failure to comply with the provisions of the Code relating to provision of an appropriate adult.</li> <li>• Pursuant to s 67 PACE a failure to comply with the code can be taken into account when considering any issue in proceedings.</li> <li>• Here the relevant issue would be whether any admissions made in interview without the presence of an appropriate adult or legal representative can be regarded as reliable or admissible.</li> </ul>	



Question 3(b)	7 marks
Data too limited for feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none"> <li>• There appears to be no doubt that the client has committed the actus reus of common assault and battery by intentionally and directly applying force by pushing the officer.</li> <li>• If the evidence of the client and her witness is accepted, the officer did not comply with the requirements of PACE in conducting the stop and search.</li> <li>• Given that the officer was in possession of information relating to an offence that had recently been committed and the description of the offender, it is likely that she had reasonable grounds, based on intelligence, that the client was in possession of stolen goods: s 1 PACE.</li> <li>• For a stop and search to be lawful the officer must explain the purpose of the search and the grounds, which she has done, but must also provide the information prescribed by s 2 PACE.</li> <li>• On her own account she has done so, but on that of the client and her witness, she has not done so. As a result she is not acting lawfully and in the execution of her duty at this point.</li> <li>• The client would be entitled to use reasonable force in self defence.</li> <li>• The offence of assault and battery of an emergency worker does not require that the constable be in the execution of her duty in the sense required by s 89 Police Act 1996: <u>Campbell v CPS</u> (2020).</li> <li>• However, the client is relying here on using self defence to resist an unlawful stop and search.</li> <li>• If the force she has used is reasonable, which appears to be the case, she does have a defence.</li> </ul>	

Question 3(c)	8 marks
Data too limited for feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none"> <li>• The client is entitled to credit for an early guilty plea in relation to the shoplifting offences.</li> <li>• She is not entitled to credit in relation to the assault and battery of the emergency worker.</li> <li>• The assault offence appears to fall within B2 as none of the factors pointing to culpability grade A apply and there is no significant physical harm.</li> <li>• Even allowing for the aggravating feature of it being an assault on an emergency worker, the guidelines suggest a community order, probably at the high level.</li> <li>• The shoplifting offences collectively appear to fall within B1 as the value exceeds £1000, but none of the high culpability factors appear to be present.</li> <li>• The previous similar convictions will constitute an aggravating feature.</li> <li>• It is possible that the custody threshold has been passed.</li> <li>• The mental health condition is a significant feature.</li> <li>• Mitigation should focus on the likely outcomes and seek to influence the court in favour of a preferred outcome.</li> <li>• Here the focus will be on persuading the court that the custody threshold has not been reached, or that if it has been reached any sentence can be suspended.</li> <li>• A community order (or conditions attached to a suspended sentence) can include mental health and alcohol-related interventions.</li> <li>• These would appear to be the most relevant measures to address the offending behaviour.</li> </ul>	

Question 4(a)	6 marks
Data too limited for feedback.	
Suggested Points for Response	
<ul style="list-style-type: none"> <li>Where a defendant has indicated a plea of guilty to an either way offence and the magistrates court has decided that it does not have sufficient sentencing powers, it must commit the defendant for sentence to the Crown Court pursuant to s 18 Sentencing Act 2020.</li> <li>The magistrates court may also commit a summary offence for sentence where it is linked and carries driving licence implications: s 20 Sentencing Act 2020.</li> <li>Committal may be on bail or on remand.</li> </ul>	

Question 4(b)	6 marks
Data too limited for feedback.	
Suggested Points for Response	
<ul style="list-style-type: none"> <li>It may be possible to agree a basis of plea with the prosecution.</li> <li>This will depend on whether the prosecution is confident that it can establish its version of the facts before the court.</li> <li>If the prosecution is open to negotiation, the basis of plea should be reduced to writing and agreed between prosecution and defence.</li> <li>The prosecution version suggests that this is in category A2.</li> <li>It is culpability A as it involves racing.</li> <li>The level of harm is not particularly great.</li> <li>The defence version suggests that this is in category C2.</li> <li>The culpability is on the basis that this only marginally enters the category of dangerousness.</li> <li>There is a significant difference in that the entry point for A2 is three years custody and for C2 it is one year custody.</li> <li>There is therefore scope for a Newton hearing.</li> <li>The judge will hear evidence limited to which version is established.</li> <li>If the judge finds that the defence version is established, the defendant will be sentenced on that basis.</li> <li>If the judge finds that the prosecution version is established, the defendant will be sentenced on that basis, and will lose the credit for his guilty plea.</li> </ul>	

Question 4(c)	6 marks
Data too limited for feedback.	
Suggested Points for Response	
<ul style="list-style-type: none"> <li>In relation to the offence of causing serious harm by dangerous driving the court must impose a disqualification of at least two years (s 34 (4) Road Traffic Offenders Act 1988) with a requirement for an extended driving test (s 36 Road Traffic Offenders Act 1988).</li> <li>As there is a previous conviction for driving with excess breath alcohol, the court must impose a disqualification of at least three years for that offence (s 34 (3) Road Traffic Offenders Act 1988).</li> <li>A disqualification should be extended if an immediate custodial sentence is passed.</li> <li>The court must also endorse the licence with between three and 11 penalty points.</li> <li>Each offence attracts this, but only one endorsement is required.</li> </ul>	

Question 4(d)	5 marks
Data too limited for feedback.	
Suggested Points for Response	
<ul style="list-style-type: none"> <li>• As the case was heard in the Crown Court an appeal lies to the Court of Appeal pursuant to s 9 Criminal Appeal Act 1968.</li> <li>• An application for leave to appeal must be made and will initially be dealt with on the papers by a judge.</li> <li>• Trial counsel, if of the opinion that an appeal is appropriate, should settle grounds of appeal.</li> <li>• If the application is refused it can be renewed before the Court of Appeal.</li> <li>• The appeal will be allowed if the Court of Appeal considers that the defendant should have been sentenced differently.</li> <li>• The sentence should be wrong in principle, or unlawful.</li> </ul>	