

CHIEF EXAMINER REPORT

JUNE 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 June 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

Only 7 candidates sat the paper in this session.

In some cases candidates either did not read the questions closely enough, or lacked the detailed knowledge necessary to answer, and so resorted to generalities. By way of example 3 (c) only required coverage of disqualification/endorsement, and 4 (a) was on use of existing photographs, not VIPER/PROMAT.

There was little evidence that candidates had actually investigated the relevant sentencing guidelines.

Generally knowledge of law and procedure was better than application to the facts of the cases. However the weaker candidates only provided brief and basic outlines which are inadequate at this level.

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 valid feedback.	
Suggested Points for Response:	
• S 24 PACE governs arrest by a constable. • The constable must personally at least have a reasonable suspicion that the suspect is about to commit or is committing an offence or, where an offence has been committed or is reasonably suspected to have been committed, a reasonable suspicion that the suspect was responsible. • At least one of the reasons enumerated in s 24 (5) must be satisfied. • Given the enquiries that have already been undertaken it is unlikely that the police need to ascertain the identity or address of the suspect or that he is at risk of disappearing. • Likewise it is unlikely that it is necessary to avoid causing or suffering injury, causing damage, obstructing the highway committing an offence against public decency. • Similarly there is no need to protect any child. • The police would no doubt assert that arrest is necessary to facilitate the prompt investigation of the offence. • The fact of arrest and grounds for the arrest must be given: s 28 PACE. • Failure to do so renders the arrest unlawful. • It will become lawful from the point when these requirements are satisfied. • The suspect should be cautioned. • Failure to caution means that anything subsequently said is not admissible in evidence. • This applies to the remark attributed to Brown. • The search may be unlawful (if undertaken prior to s 28 being complied with), but evidence of what was found is admissible unless excluded.	

Question 1(b)	5 marks
Data too limited for valid feedback.	
Suggested Points for Response:	
• S 18 PACE authorises the search of premises “occupied or controlled” by a person who has been arrested for an indictable offence by a constable. • Such a search must normally be authorised by an inspector, and that is the case here. • Possession of controlled drugs with intent to supply is an indictable offence. • The permitted search is for evidence related to the offence for which the suspect has been arrested and any related offence. • Here the search appears to be for drugs and drug paraphernalia which is so related. • It appears to be disputed whether the flat is occupied or controlled by Brown. • If the search is not within s 18, evidence secured may be excluded.	

Question 1(c)	7 marks
Data too limited for valid feedback.	
Suggested Points for Response:	
• S 37 PACE deals with the duties of a custody officer where, inter-alia, there is no justification for further detention. • This will apply here as the police cannot proceed further until the analysis of the suspected drugs is complete. • This will be precharge bail. • Any conditions permissible under the Bail Act 1976 may be imposed: s 47 PACE. • There are preconditions for imposing bail: s 50A PACE. • Here conditions of bail may be required to prevent the commission further offences. • The custody officer must have regard to any representations made by or on behalf of the suspect. • Here such representations would be based on the impact of the proposed conditions on Brown's employment. • If the conditions are imposed Brown can apply to the magistrates court for these conditions to be varied: s 47 PACE and s 5B Bail Act 1976.	

Question 1(d)	5 marks
Data too limited for valid feedback.	
Suggested Points for Response:	
• Application for a representation order must be made electronically to the Legal Aid Agency. • The likely sentence if convicted of possession of this quantity of Class A drugs is such that allocation to the Crown Court is virtually inevitable. • In that event the merits test is automatically satisfied. • Even if the case proceeds in the magistrates court Brown is at clear risk of loss of liberty. • The means test is likely to be satisfied as his earnings are below the initial means test limit of 12,475 per annum.	

Question 2(a)	8 marks
Data too limited for valid feedback.	
Suggested Points for Response:	
• This will be a Plea Before Venue and Mode of Trial/Allocation hearing in the magistrates court. • The charges will be put to Brown and he will be asked to indicate an intended plea. • If he intimates a plea of guilty the court will proceed to sentence or commit for sentence to the Crown Court. • Otherwise the court will decide whether or not to accept jurisdiction. • Prosecution and defence may make representations as to venue, but the court must consider the case to be as serious as alleged by the prosecution. • The court will consider the criteria in s 19 MCA, the Criminal Procedure Rules and the mode of trial guidelines. • The primary consideration for the court is whether or not it has adequate sentencing powers. • On the prosecution case the quantity of cocaine places it in harm category 2. • Brown would probably be seen as having a significant role as a distributor to street level dealers, but even if he is seen as having a lesser role the sentencing guidelines indicate a starting point of five years custody with a range starting at three years six months. • This is well beyond the maximum of 12 months the magistrates court could impose for two either way offences. • There is no question of Brown being put to his election. • The court can also consider bail and if bail is extended can vary the conditions if appropriate.	

Question 2(b)	5 marks
Data too limited for valid feedback.	
Suggested Points for Response:	
• This will be a Plea and Trial Preparation Hearing. • Brown will be arraigned and invited to enter a plea. • He can indicate that he is willing to plead guilty to simple possession of the Class B drugs as this may involve some credit for sentencing. • It is however unlikely to be acceptable to the prosecution. • There is an online Pre-Hearing Information Form to be completed by the parties in readiness for the PTPH. • The judge will establish a timetable and a trial date may be assigned. • Issues relating to disclosure and other procedural issues may be addressed. • Bail can again be considered if appropriate.	

Question 2(c)	12 marks
Data too limited for valid feedback.	
Suggested Points for Response:	
• The burden of proof is on the prosecution to the criminal standard. • In relation to the Class A drugs the issue between prosecution and defence is whether Brown was in possession of the drugs. • In relation to the Class B drugs the issue between prosecution and defence is whether Brown had any intention to supply these drugs to another or they were simply for his personal use. • The defence may argue that the search of Brown at the time of arrest, which would normally be legitimate by virtue of s 32 PACE is actually unlawful because of the failure to comply with s 28 and that the evidence resulting from this should therefore be excluded. • The defence may also argue for the exclusion of the evidence from the search of the flat on the basis that Brown was not in occupation or control. • The prosecution has a number of items of evidence. • There will be evidence from the officers who were surveilling Brown, much will depend on the quality and specificity of this. • At least it is evidence of behaviour consistent with being involved in drug dealing. • The drugs, cash and phones found on arrest, if admissible as evidence, suggest something beyond mere possession. • Brown now has an explanation for the cash and phones but this was not mentioned in interview and the prosecution may seek permission to invite the jury to draw adverse inferences. • The evidence of Lorraine Evans, if accepted, would appear to be highly probative. • Alleging that Lorraine Evans is lying to protect Jermaine Kennedy is an attack on her character, but as Matt Brown is of previous good character this is of limited significance. • As Brown is of previous good character he would normally be entitled to a full Vye direction on good character in relation to both credibility and propensity. • The judge may modify this in light of his admission to possession, but this is significantly different from being involved in the distribution of drugs.	

Question 2(d)	5 marks
Data too limited for valid feedback.	
Suggested Points for Response:	
• Appeal lies to the Court of Appeal (Criminal Division). • As counsel has indicated that there are grounds for appeal s/he should settle these. • The application for leave to appeal should be made within 28 days. • It will initially be considered on paper by a single judge. • If leave is refused the application can be renewed to the full court. • The sole ground of appeal is that the conviction is unsafe. • The court will consider whether there was a misdirection and, if so, whether this meant that the jury were not in a position where they could reach a just verdict. • Normally a decision that there has been a misdirection will not result in the defendant being exonerated, but is likely to lead to a retrial.	

Question 3(a)	9 marks
Data too limited for valid feedback.	
Suggested Points for Response:	
• Causing serious injury by careless or inconsiderate driving is also a criminal offence. It is less serious than causing serious injury by dangerous driving, carrying a maximum sentence of two years as opposed to 5 years. • If Kumar pleads not guilty to the more serious offence the judge can direct the jury that they can find him guilty of the lesser offence if they are not satisfied that the driving was dangerous but that it was careless. • It would be appropriate to inform prosecution that Kumar would plead guilty to the lesser offence. • This plea may be acceptable, and if so it is likely that the case will be dealt with in the magistrates court as it would be culpability category B (unsafe manoeuvre) and harm category 2 as the injuries are not described as particularly grave or causing permanent disability or dependency. • While the victim is a vulnerable road user, there appear to be no other aggravating features taking it outside the sentencing powers of the magistrates court. • The starting point is a high-level community order and the range extends to 26 weeks imprisonment. • This will also allow Kumar to obtain credit for an early guilty plea. • The starting point for the lowest category of serious injury by dangerous driving is one years custody and it is always regarded as crossing the custody threshold. • This is not a case for offering a basis of plea to the original charge or for a Newton hearing. • If the prosecution do not accept the plea of guilty to the lesser charge, Kumar can still, when the more serious charge is put to him, indicate a plea of not guilty to that but guilty to the lesser charge.	

Question 3(b)	7 marks
Data too limited for valid feedback.	
Suggested Points for Response:	
• Failure to surrender to custody without reasonable cause is a criminal offence: s 6 Bail Act. • Even if there is a reasonable cause the defendant must still surrender to custody as soon as reasonably practicable otherwise the offence is committed. • It is for the defendant to show that he had reasonable cause. • If Kumar is charged and convicted in the magistrates court the maximum sentence is three months imprisonment. • The family emergency may well be regarded as reasonable cause, but in any event Kumar will need to surrender to custody as soon as practicable. • As there is confirmation from the hospital, it is possible that the court will either stand the case over till the afternoon to allow Kumar to return, or adjourn the case and re-bail him.	

Question 3(c)	5 marks
Data too limited for valid feedback.	
Suggested Points for Response:	
• Disqualification for this offence is obligatory. • S 34 (4) Road Traffic Offenders Act 1988 provides that where the defendant has more than one disqualification for over 56 days imposed within the three years immediately preceding the commission of the current offence the minimum period of disqualification is two years. • This replaces the normal minimum disqualification period of 12 months and can equally be reduced or disapplied if special reasons exist. • There is no indication of any special reasons on these facts. • Endorsement of the licence is also obligatory. • The number of points within the range 3-11 is in the discretion of the court.	

Question 4(a)	6 marks
Data too limited for valid feedback.	
Suggested Points for Response:	
• In principle photographs of a suspect can be shown to an eyewitness. • Annex E to PACE Code D applies. • The eyewitness must have already provided a description and this must have been recorded. • The witness should be shown not less than 12 photographs of individuals bearing a close resemblance to the description. • The witness must be informed that an image of the person they saw may or may not be among those being shown and that they should look at at least 12 before making an identification. • If a witness makes a positive identification, photographs should not be shown to other potential eyewitnesses. • A witness who has made an identification from photographs can participate in a subsequent video or other identification procedure. • Such a procedure, normally a VIPER/PROMAT video identification procedure should be held where there is an identified available suspect who denies involvement. • The suspect/legal representative should be informed that a witness has made an identification from photographs. • This would be the case here. • The photographs used must be retained. • Failure to comply with the Code does not give rise to criminal or civil liability. • The provisions of the Code are admissible in evidence and can be taken into account. • Here non-compliance with the code F established may be relevant to an application to exclude related evidence, such as any positive identification at a VIPER/PROMAT procedure.	

Question 4(b)	5 marks
Data too limited for valid feedback.	
Suggested Points for Response:	
• The SRA Code of Conduct applies. • Part 1.4 provides that a solicitor (including any fee earner working within the practice) must not mislead a court or be party to the court being misled. • The solicitor is not however responsible for making any decision on the veracity or otherwise of the client or witnesses. • The solicitor should act on the instructions of the client and put the case on behalf of the client to the court. • Consequently, any reservations in relation to the evidence being given by the uncle do not constitute being party to misleading the court. • There is nothing to prevent his evidence in support of the alibi being given, and no reason to withdraw from the case. • Even if the circumstances did give rise to a breakdown in the relationship between solicitor and client nothing should be said or done to breach client confidentiality by indicating the reasons for withdrawing.	

Question 4(c)	6 marks
Data too limited for valid feedback.	
Suggested Points for Response:	
- Ivan Roberts will have been cautioned before the interview. - The caution is: You do not have to say anything. But it may harm your defence if you do not mention when questioned something which you later rely on in court. Anything you do say may be given in evidence. - Here Ivan Roberts proposes to give evidence relating to lending out the scooter and to his alibi, neither of which were mentioned in interview. - The prosecution could therefore invite the court to draw the inference that the reason why these matters were not mentioned is that the defendant has subsequently invented or fabricated the relevant material: s 34 Criminal Justice and Public Order Act 1994. - A conviction cannot be based solely on such an inference. - While it is not a requirement that the suspect had received legal advice, it must be established that he was given the opportunity of seeking such advice, otherwise inferences may not be drawn. - The court will consider all the circumstances, in particular the fact that this was a juvenile who was not legally represented and where the appropriate adult appears to have given the advice to go no comment.	

Question 4(d)	8 marks
Data too limited for valid feedback.	
Suggested Points for Response:	
- Ivan Roberts is a juvenile and is the sole defendant. - He will initially appear in the Youth Court. - This comprises specially trained Justices or District Judge, does not sit in public and has special procedures appropriate for dealing with juvenile offenders. - The offence charged is either way for an adult with a maximum sentence of four years in the Crown Court. - A juvenile does not have any right of election, and the court will determine venue. - There is a very strong presumption in favour of trial in the youth court. - The provisions relating to grave crimes and dangerousness do not apply: ss 249/250 and s 306 Sentencing Act 2020. - The Youth Court can impose any sentence up to a 24 month Detention and Training Order. - This is the maximum sentence for this offence. - This is not a repeat offence so the mandatory minimum sentence provisions do not apply: s 315 Sentencing Act. - There are specific sentencing guidelines for this offence in relation to juveniles. - Possession of a bladed article and doing so on educational premises are both factors increasing the seriousness. - None of the aggravating factors listed in the sentencing guidelines appear to be present. - The fact that Ivan Roberts only has one caution for a dissimilar offence provides some mitigation. - There is no question of a discount for a guilty plea. - The guidelines suggest that the court should consider a Youth Referral Order or a Detention and Training Order. - A YRO is the community order appropriate for juveniles and provides for a wide range of specific requirements based on an assessment of the circumstances of the offender. - A DTO involves a custodial element and a supervision element. - Both orders reflect the specific emphasis on rehabilitation when sentencing juveniles.	