



CHIEF EXAMINER REPORT

JUNE 2026

LEVEL 6 UNIT 4 – EMPLOYMENT 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 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

Some questions had a very specific focus and there was evidence of candidates failing to appreciate this (A4 is the prime example, but A2 and B3(b) also evidenced this). Candidates generally had reasonable knowledge of the law, although tended to quote statute at length rather than explaining it. Essays tended to be descriptive rather than evaluative/critical.

Some candidates struggled at times with the clarity and structure of answers.

Most questions raised multiple issues, and often candidates missed or misunderstood one of these.

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.

Section A

Question 1a	15 marks
Most candidates could explain the nature of restrictive covenants and cited some relevant examples, but there was little attempt to assess whether the balance was properly struck between the interests of employers and employees.	
Suggested Points for Response:	
- Identify that restrictive covenants may be included in contracts of employment to protect an employer's business interests. Restrictive covenants are prima facie void as restraint of trade/for public policy reasons - Explain that the employer will need to ensure that any restrictive covenants in contracts of employment are no wider than necessary to protect a legitimate business interest. If the clause is too wide, it will not be enforceable against the employee as it will amount to a restraint of trade - There must be protection of a legitimate business interest and the clause 'reasonably' achieves this, <i>Nordenfelt v Maxim Nordenfelt Guns and Ammunition Co Ltd</i> (1894) - Reasonableness in terms of scope, duration and the type of work involved, <i>Fellowes v Fisher</i> (1976). Clauses should be specific to the position of the employee. Clauses must be appropriate to the level of job, <i>Patsystems Holdings Ltd v Neilly</i> (2012); <i>Safetynet Security Ltd v Coppage</i> (2012) - Case law examples include <i>TSC Europe Ltd v Massey</i> (1999), <i>Hanover Insurance Broker v Schapiro</i> (1994), <i>Towry EJ Ltd v Barry Bennett and Others</i> (2012) - Cite relevant case law on the enforceability of restrictive covenants, including but not limited to, <i>Systems Reliability Holdings v Smith</i> (1990), <i>Emersub v Wheatley</i> (1998), <i>Safetynet Security v Copenhagen</i> (2013); <i>Towry Ltd v Barry Bennett</i> (2012)	
Question 1b	10 marks
Data too limited for valid feedback.	
Suggested Points for Response:	
- Explain that under TUPE 2006 Regulation 4(2), a transferee shall acquire 'all the rights, powers, duties and liabilities' under or in connection with the contract' - Explain that the transferred employees employment contract is protected from variation by the transferee. If the sole reason for the variation is the transfer, any such change will be void, Regulation 4(4) and (5) - Identify the exception to this rule exists where variation to contractual terms may be allowed for economic, technical or organisational (ETO) reasons entailing changes in the workforce that is related to the conduct of the business, TUPE 2006 does not explicitly define an economic, technical or organisational (ETO) reason but the Department of Business, Innovation and Skills suggest economic is likely to refer to 'profitability', technical to refer to the 'equipment or processes' and organisational to consider the 'management structure' of the entity - Include case law examples of the interpretation of ETO reason including but not limited to <i>Wheeler v Patel</i> (1987), <i>Abellio London and CentreWest London Buses v Musse</i> (2012) - ETO reasons are generally broadly interpreted	

Question 2	25 marks
Candidates recognised that age discrimination has specific criteria. Answers could have focussed more on the specific issue of the Employer Justified Retirement Age and whether it operated appropriately.	
Suggested Points for Response:	
• Define direct discrimination under the Equality Act 2010 • Explain that there is no defence to direct discrimination in relation to any of the EA 2010 protected characteristics, with the exception of age discrimination, s4 • Explain indirect discrimination under the EA 2010 • Identify the 'proportionate means of achieving a legitimate aim' defence as applicable only to indirect discrimination, with the exception of age discrimination, where it can be a defence to direct discrimination • Define the concept of an 'employer justified retirement age' • Explain that direct age discrimination can be justified if the employer can demonstrate that the treatment of the employee was a proportionate means of achieving a legitimate aim, s13 EA • Identify various examples of legitimate aims, including but not limited to, physical and mental demands of the post; there must not be an assumption of decline in ability, safety, promotion of diversity in terms of age and race, 'intergenerational fairness'. Succession planning and intergenerational equity have been considered legitimate aims • Case law examples include but are not limited to Seldon v Clarkson Wright and Jakes (2012), Prof J Pitcher v University of Oxford (2019). Homer v Chief Constable of West Yorkshire Police (2012). Woodcock v Cumbria Primary Care Trust [2012]. Heskett v Secretary of State for Justice CA 11 Nov 2020 • Critical analysis per the question should be consistently evident	

Question 3	25 marks
Answers were generally sound, although relied on direct quotation/copying of statute rather than analysis and assessment. Some lacked real depth/detail.	
Suggested Points for Response:	
• Identify that the proper selection requirement on the employer to consider a pool of employees. Selection for the redundancy pool must be reasonable in the circumstances, Capita Hartshead Ltd v Byard • The employer must use a fair and objective way of selecting persons for redundancy and demonstrate the following: the basis of the selection process, Cox v Wildt Mellor Bromley Ltd (1978), how it was applied in practice, Protective Services (Contracts) Ltd v Livingstone (1992). Williams v Compair Maxam (1982) reference should be made to measurable facts that can be objectively checked, including disciplinary record. An employees attendance record may also be considered in selection for redundancy, so long as absences not related to disability or maternity, EA 2010 • Employees may be selected on their length of service, this cannot be the only basis for selection as it may result in age discrimination. The 'last in, first out' (LIFO) basis is only acceptable if it can be objectively justified and seniority is only one factor considered, Hobson v Park Brothers (1973) and is not discriminatory, Clarke v Eley (1982) • Where there is failure to follow proper redundancy procedure, the dismissals will be treated as an unfair dismissal • Remedies. Identify the remedies for unfair dismissal are under ERA s.112 and Trade Union and Labour Relations (Consolidation) Act 1992 (TULRCA) s.157(1) an order of reinstatement, an order of reengagement and an order for compensation for a basic award and a compensatory award. The basic award is the same as that of a redundancy payment • If the redundancy was unfair, there will be an additional right to compensation under s123 ERA. Responses could include: Compensation under s123 ERA. This includes loss suffered and expenses reasonably incurred, as well as any benefit lost. This payment is also subject to a maximum statutory amount of 52 weeks gross pay or a statutory amount that increases each	

year. If a tribunal finds that an employer acted in breach of the s188 TULRCA duty to consult, they must make a protective award *Hardy v Tourism South East* (2005)

- Critical assessment of the law should be evident
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Question 4	25 marks
Data too limited for valid feedback.	
Suggested Points for Response:	
• Identify the relevant statute of the Shared Parental Leave Regulations (2014) and explain the qualifying criteria for shared parental leave under this legislation • The child's mother or adoptive parent must be eligible for maternity leave, pay or allowance or adoption leave or pay • The employee seeking shared parental leave, either the mother or partner, must meet the 'continuity of employment test': worked for the employer continuously for at least 26 weeks by the end of the 15th week before the due date, still be employed by the employer while they take shared parental leave, give the employer eight weeks' notice of intention to take the leave and provide a declaration that their partner meets the employment and income requirements which allow the employee to receive shared parental leave • Critical assessment of protection given to mothers, including but not limited to: The opportunity to share leave is available only to those who already have a steady income and meet certain tests connected to their employment. This may result in lack of accessibility to those with a non traditional working pattern and partners on a low income • The statute does not recognise parents who do not have a partner , they are unable to share leave with anyone other than a recognised 'partner' • A mother must take a minimum of two weeks maternity leave following birth – four if she works in a factory - whether the remainder of her leave is shared or not. This suggests that the legislation, while facilitating shared parental responsibilities, nonetheless recognises the need for leave immediately following the birth of a child and the need to avoid placing pressure on females to share leave after giving birth • The Parental Bereavement (Leave and Pay) Act 2018. Parents who lose a child under 18 years of age or suffer a stillbirth at or after 24 weeks are entitled to at least two weeks leave. There is no notice period for the leave and no death certificate is required as evidence. The rights are 'day one' rights with no requisite duration of employment nor qualifying criteria to take this leave unpaid. However, the leave will not be paid unless certain requirements met • Paid bereavement leave requires 26 weeks continuous employment (s 171ZZ6 Social Security Contributions and Benefits Act 1992, as inserted by the 2018 Act). These requirements do not appear as onerous as those for shared parental leave. Nonetheless, paid leave is not given to those lacking long term employment	

Section B

Question 1	25 marks
The potential unfair dismissal was identified and generally the law was correct, if awkwardly expressed with reasonable application. The discussion of caselaw could have been more precise. Age/sex discrimination was often spotted but not fully developed. The equal pay aspect was generally well handled.	
Suggested Points for Response:	
- Identify that Andrea has been dismissed for conduct (gross misconduct) and this is a potentially valid reason for dismissal under s98 Employment Rights Act 1996. However, the employer must demonstrate that the dismissal was reasonable and procedurally fair - Explain that the employer must show substantive fairness and that Andrea's dismissal fell within a band of reasonableness s98(4,) HSBS v Madden (2000), Iceland Frozen Foods Ltd v Jones (1982) - Identify that fairness can include where the employer genuinely believed the employee was guilty of the misconduct and had reasonable grounds for that belief, appropriate review of circumstances, warnings, seriousness of the allegation upon which the dismissal is based and corresponding level of investigation, BHS Ltd v Burchell (1978); Sainsburys Supermarkets Ltd v Hitt (2003) - Identify that Bubbles Restaurant has not followed the ACAS Code - Identify that no investigation or proper procedure has taken place as Andrea is dismissed on the basis of a statement made by her colleague, with no further investigation - It appears Andrea has been unfairly dismissed. Credit any reasoned conclusion - Identify s13 EA 2010 direct discrimination. Andrea has been treated less favourably on the grounds of her sex and her age, as the manager has dismissed her on the basis of a statement made by a 'senior man' and it appears his statement was given more credibility than her denial on these bases. She has also likely been harassed by being called 'a young girl crying her way out of ...' trouble. This is a hostile and degrading statement, s26 EA 2010 Donatella - Sex is a protected characteristic under s4 EA 2010 - Every contract of employment contains an implied sex equality clause, s66 EA 2010. Lucas is employed by the same employer, at the same time and appears to be performing the same role, so is a real comparator (s65 EA 2010) - Bubbles Restaurant may raise the defence that the difference in pay is not based on gender but on a material factor s69 EA 2010, such as high qualifications and length of service, Cadman v Health and Safety Executive (2007) - It appears Donatella's rights have not been breached	

Question 2	25 marks
The fixed term and agency aspects were generally seen although coverage could have been more detailed.	
Suggested Points for Response:	
Tariq - Identify the relevance of the Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations (2002) - Tariq is a fixed term worker as he is on an 18 month contract with Cakes Café - Reg 3 states that fixed term workers have a right not be treated less favourably regarding terms of contract or any detriment. This includes access to benefits - Tariq does not have access to the laptop. In this regard, he has been treated less favourably - Cakes Café can raise a defence of objective justification, Reg 4, with respect to the cost of the item. Credit any reasoned conclusions	

- Tariq can request Cakes Café provide him with a statement giving the particulars of the reasons for the less favourable treatment, which they must provide within 21 days, Reg 4

Jalil

- Identify that Jalil is an agency worker and has rights under the Agency Worker Regulations 2010 (AWR)
- AWR Regs 5 and Reg 7 (2), once an agency worker has completed a 12-week qualifying period, they will be entitled to the same basic working conditions as if they were hired by the company they work
- Jalil has worked for Cakes Café for 15 weeks. He is now entitled to the use of the canteen as 12 weeks have elapsed
- AWR 2010-Jalil has a right to be entitled to access to shared facilities, including staff canteen. This may also be considered a day one right
- Reg 3 AWR, an agency worker is an individual supplied by an agency to work temporarily and for and under the supervision of a hirer

Zoe (9 marks maximum)

- Cakes Café has no general legal obligation to provide Zoe with a reference. However, they cannot refuse to supply a reference on the basis of any discriminatory reasons
- When an employer provides a reference, they create a duty of care between themselves and the employee with respect to the content of that reference, Spring v Guardian Assurance (1995)
- The duty requires that due care is taken when providing the reference and the employer must not give any misleading statements that may damage an employee, Harris v Trustee Savings Bank (2000)
- Cakes Café appears to have breached Zoe's right to due care in a reference as the reference contains a false and misleading statement that would damage her as an employee
- The reference also appears to be vexatious as her manager did not want her to leave

Question 3a

10 marks

Most candidates saw potential constructive dismissal, but there was confusion as to whether it could be wrongful or unfair.

Suggested Points for Response:

- Terms are implied into every contract of employment, including the implied term of mutual trust and confidence. This term has been extended to include harassing, abusive, derogatory or humiliating language or practices, Ogilvie v Neyrfor-Weir Ltd (2003)
- An objective standard is taken by the courts in determining breach of the duty of mutual trust, Malik v BCCI (1997). When this fundamental term is breached by the employer, the employee may resign and claim constructive dismissal, Western Excavating Limited v Sharp (1979). The breach of the employment contract by the employer must be considered sufficiently serious to constitute a constructive dismissal
- Denise must show there has been a repudiatory breach of the implied term of trust and confidence, that led to her resigning.
- Patty has spoken to Denise in a way that has made her feel embarrassed and that she found to be rude. This occurred in front of customers and co-workers, likely adding to the 'embarrassment'
- The relationship is further damaged by Patty's response to Denise's complaint at being spoken to in that manner. Wrongful dismissal requires that Denise promptly resigns Cook v MSHK Limited (2009). Denise resigned a week after the incident, which appears prompt
- It appears Denise has been constructively dismissed. Credit any reasoned arguments on this point

Question 3b	15 marks
here were three issues. Most candidates recognised failure to pay appropriate minimum wage rates, but a number missed the point that wages are due whether work is required or not. Candidates were not aware of the specific provisions of the Neonatal Care (Leave and Pay) Act 2023 which covered the issue relating to the sick newborn, so this aspect was not addressed well.	
Suggested Points for Response:	
- Identify that there has been a breach of the National Minimum Wage Act 1998 as Farooq has been paid the same wage throughout his duration of employment despite changing age bracket - Farooq should have been paid the minimum wage applicable when was 19 years of age, this would have risen when he was 21 years of age - Identify that Farooq is an employee of Yoodlers Ltd. Duties are implied into the contract of employment. The employer has a duty to pay wages even when there is no work for the employee, Way v Latilla (1937), Beveridge v KLM UK Ltd (2000) - Yoodlers Ltd has a duty to pay Farooq his full wages during the week he is not needed to work - The employer does not have a duty to provide work, except in certain circumstances, none of which apply to Farooq - Identify that under the Neonatal Care (Leave and Pay) Act 2023 (effective 6 April 2025). There are additional statutory leave entitlements for parents when a baby has received medical or palliative neonatal care for at least seven consecutive days within the first 28 days after birth. Farooq was entitled to the leave he requested	

Question 4a	10 marks
There was again confusion over wrongful dismissal, unfair dismissal and qualification periods. No candidates clearly identified that this was likely automatically unfair as health and safety related, so no qualifying period.	
Suggested Points for Response:	
- Ito has been employed by QuikNotes for 14 months. S98 ERA 1996 potential unfair dismissal claims require an employment duration of two years. Automatic unfair dismissal has no employment duration requirement. Reasons for automatic unfair dismissal include dismissal for taking measures to protect the health and safety. Ito has removed the kettle to protect other from being injured. he has been dismissed for his actions. This is likely automatic unfair dismissal - Remedies for unfair dismissal ss112 and 113 ERA: include reinstatement, reengagement, and financial compensation in the form of a basic and compensatory award - An uplift of up to 25% may be awarded as proper procedure does not appear to have been followed in the dismissal Polkey v AE Dayton Services Limited (1988)	

Question 4b	15 marks
Harassment by reference to gender reassignment was generally well handled. Some candidates missed the sexual orientation aspect. The victimisation aspect was also generally well handled.	
Suggested Points for Response:	
- Identify the s7 Equality Act 2010 (EA 2010) protected characteristic of gender reassignment - Explain the EA 2010 definition of gender reassignment discrimination includes direct discrimination, harassment and victimisation. - Define s26 EA 2010 harassment - Hubert has been harassed by Cassandra as he has been made to feel 'embarrassed and humiliated' by the comments made to him. He also feels too 'intimated' to respond. Cassandra has also asked Hubert personal questions before, suggesting a pattern of behaviour. The comments are also arguably of a sexual nature - Define s27 EA 2010 victimisation - Yusif has been victimised for asserting the rights of Hubert who has been subject to discrimination	

- Yusif may also have been discriminated against by association to a person with a protected characteristic
- Yusif has lost the award and bonus payment as the detriment suffered by discrimination
- Remedies under the EA 2010 for the discrimination suffered: the ET may make an order of declaration of rights s124 (2), a recommendation s124 (2), compensation with no upper limit s124 (2)
- Hubert may be able to recover injury to feelings
- Identify the Vento bands