



## CHIEF EXAMINER COMMENTS WITH SUGGESTED POINTS FOR RESPONSES

**JANUARY 2023**

**LEVEL 3 UNIT 15 – THE PRACTICE OF LAW FOR THE ELDERLY CLIENT**

### **Note to Candidates and Learning Centre Tutors:**

The purpose of the suggested points for responses is to provide candidates and learning centre tutors with guidance as to the key points candidates should have included in their answers to the January 2023 examinations. The suggested points for responses sets out a response that a good (merit/distinction) candidate would have provided. Candidates will have received credit, where applicable, for other points not addressed by the marking scheme.

Candidates and learning centre tutors should review the suggested points for responses in conjunction with the question papers and the Chief Examiners' **comments contained within this report**, which provide feedback on candidate performance in the examination.

### **CHIEF EXAMINER COMMENTS**

A wide range of practical topics were covered in the three questions which formed the paper. All the case scenarios were new and most of the questions were also new, with parts of several questions having appeared in previous examination papers in different contexts.

### **CANDIDATE PERFORMANCE FOR EACH QUESTION**

#### **Question 1**

This question comprised of three parts, carried a total of 30 marks.

**(a) and (b)** tested the candidates knowledge of testamentary capacity.

**1(c)(i)** asked candidates to explain the duties and responsibilities of an attorney. The response only listed the powers the attorney has. The question was not understood by the candidates.



**(c)(ii)** asked the candidates to explain the principles of making a statutory will and no marks were awarded.

Overall, the first part of the question was answered well by the candidate.

### **Question 2**

This question was divided into two parts and carried a total of 22 marks. The question tested the candidates knowledge of ways a client can raise funds to pay for their care.

**(a)** asked the candidates to explain a lifetime mortgage and a home reversion plan. The candidates answered these questions well.

**(b)** asked the candidates to explain what impact equity release would have on the client's entitlement to benefits. This question was also answered well.

Overall, this question was the answered well by the candidates.

### **Question 3**

This question was divided into two parts and carried a total of 18 marks. The question tested the candidates' knowledge on tax.

**(a)** asked the candidates to explain the Capital Gains Tax. Candidates scored highly in this question but not all the marks were awarded.

**(b)** asked the candidates to explain the Inheritance Tax. Candidates scored highly in this question but not all the marks were awarded.

## SUGGESTED POINTS FOR RESPONSE

JANUARY 2023

### LEVEL 3 UNIT 15 – THE PRACTICE OF LAW FOR THE ELDERLY CLIENT

Question Number	Suggested Points for Responses	Marks (Max)
<b>1(a)</b>	<p>An explanation that makes reference to the following facts;</p> <p>Reference made that Graham is suffering from memory loss.</p> <ul style="list-style-type: none"> <li>• That Graham has been referred to the memory clinic.</li> <li>• That Graham has not yet had a diagnosis of what is causing his memory loss.</li> <li>• That Graham did not take part in the conversations at the interview.</li> <li>• The proposed changes to Graham's Will are substantial.</li> <li>• That Sally spoke on Graham's behalf.</li> <li>• That instructions were not taken from Graham.</li> <li>• Graham's advanced age and frailty could mean he is on medication that could affect his capacity.</li> <li>• Graham could not remember the names of his sons</li> </ul>	<b>6</b>
<b>1(a)(i)</b>	<p>An explanation of the test set out in Banks v Goodfellow (1870) including reference to all <b>four</b> parts of the test.</p> <ul style="list-style-type: none"> <li>• Graham must understand the nature of the act.</li> <li>• Understand the extent of his property which he is disposing of.</li> <li>• Is able to comprehend the claims that can be made against his estate.</li> <li>• Does not suffer from any disorder of the mind.</li> </ul>	<b>4</b>
<b>1(b)(ii)</b>	<p>An explanation that makes reference to the following facts;</p> <ul style="list-style-type: none"> <li>• Reference to section 1 of the Mental Capacity Act 2005.</li> <li>• Presumption of capacity unless the contrary established.</li> <li>• Two stage test.</li> <li>• Stage 1 asks whether a person has an impairment of disturbance of the mind or brain.</li> <li>• Stage 2 asks if that impairment or disturbance means that that person is unable to make a specific decision at any particular time.</li> </ul>	<b>5</b>

<b>1(c)(i)</b>	<p>An explanation that makes reference to the following facts</p> <ul style="list-style-type: none"> <li>• The attorneys must act in the best interest of the donor at all times</li> <li>• as set out in the Mental Capacity Act 2005 Code of Practice.</li> <li>• They also owe a fiduciary duty which means that they cannot take advantage of their position as attorneys.</li> <li>• They must not put themselves in a position where their personal interests conflict with their duties towards the donor</li> <li>• They must not allow any other influences to affect the way in which they act as attorney.</li> <li>• Attorneys must not profit or derive any personal benefit from the donor's position.</li> <li>• They should keep their money and property separate from theirs.</li> <li>• They should take the donor's views and wishes into account when they act.</li> <li>• When making investments, the attorneys should have regard to the donor's age and life expectancy.</li> <li>• Consider seeking advice from an independent financial advisor and any investment products they buy on the donor's behalf should be provided by firms regulated by the Financial Conduct Agency.</li> <li>• Any other relevant point</li> </ul>	<b>10</b>
<b>1(c)(ii)</b>	<p>An explanation that makes reference to the following facts;</p> <ul style="list-style-type: none"> <li>• The CoP must be satisfied that it is in Graham's best interests to grant permission for a Statutory Will.</li> <li>• The CoP will apply an objective test when considering all of the circumstances</li> <li>• e.g. <u>NT V FS and others</u> (2013).</li> <li>• Ref to s4 Mental Capacity Act 2005</li> <li>• These factors include considering Graham's past and present wishes and beliefs, (1) past Wills or if no Will the intestacy rules</li> <li>• Reference to s46 and s47 MCA 2005 code of practice</li> </ul>	<b>5</b>
<b>Question 1 total: 30 marks</b>		
<b>2(a)(i)</b>	<p>An explanation that makes reference to the following facts;</p> <ul style="list-style-type: none"> <li>• Izabella grants a mortgage over her home to the lender</li> <li>• But stays in the home and, by retaining ownership, benefits from any increase in its value.</li> <li>• In return she can decide to receive a lump sum or income up to an agreed limit (drawdown facility)</li> <li>• Which can save on interest because interest is added annually to the value of the loan but is only charged on the amount of cash released</li> <li>• So the funds which remain in the drawdown facility only incur interest when withdrawn.</li> <li>• Izabella repays nothing immediately to the lender</li> </ul>	<b>10</b>

	<ul style="list-style-type: none"> <li>• Because the interest on the loan is rolled up,</li> <li>• And loan and interest is only repaid when she dies or moves out of her home and it is sold.</li> <li>• If her home falls in value the equity reduces</li> <li>• And if she lives long enough, the loan and interest which is compounded, could reduce the equity to nothing</li> <li>• Although Equity Release Council members will not claim more than the value of the property.</li> </ul> <p>A lifetime mortgage reduces the potential inheritance for the borrower's family</p>	
<b>2(a)(ii)</b>	<p>An explanation that makes reference to the following facts;</p> <ul style="list-style-type: none"> <li>• Izabella sells her home or a percentage of it to the plan provider</li> <li>• In return for a lump sum and/or income</li> <li>• And a lifetime lease giving her the right to stay there rent-free for life.</li> <li>• The plan provider will pay below the true value of her home taking into account Izabella's age and health.</li> <li>• As there is no loan there is no build-up of interest.</li> <li>• If Izabella has not sold all of her home she will share in any increase or fall in the value of her home.</li> <li>• If Izabella dies or has to sell in the near future she will have sold for less and without getting the full benefit.</li> <li>• The borrower can retain a specific percentage of the home to leave as an inheritance</li> <li>• There are financial penalties if the mortgage is repaid early</li> <li>• The released capital sums may affect the borrower's entitlement to state benefits</li> </ul>	<b>7</b>
<b>2(b)</b>	<p>An explanation that makes reference to the following facts;</p> <ul style="list-style-type: none"> <li>• Izabella's state pension will not be affected as it is not means-tested</li> <li>• And neither will her entitlement to winter fuel payment.</li> <li>• Izabella's entitlement to pension credit will only be affected if any income she receives takes her above the income limit,</li> <li>• Or if any lump sum she draws down takes her above the limit (£10,000).</li> <li>• Izabella's entitlement to council tax reduction will not be affected unless she becomes no longer eligible to receive the guarantee credit part of pension credit.</li> </ul>	<b>5</b>
<b>Question 2 total: 22 marks</b>		

<b>3(a)</b>	<p>An explanation that makes reference to the following facts;</p> <ul style="list-style-type: none"> <li>• CGT is payable on any increase in the value of the house during Vivienne's ownership</li> <li>• The gift of the house would be a disposal for CGT purposes</li> <li>• The acquisition value will be the purchase price of £180,000,</li> <li>• And the disposal value will be the open market value at the time of the gift. £220,000.</li> <li>• As this is not her principal home the principal private residence exemption will not apply.</li> <li>• Vivienne will have her personal allowance to set against the gain</li> <li>• £12,300 in 2022/23.</li> <li>• She can deduct incidental costs such as the cost of the repairs</li> <li>• The capital gain will be added as a "top slice" to the taxable income of Vivienne</li> <li>• The net gain is taxed at 28%.</li> </ul>	<b>10</b>
<b>3(b)</b>	<p>An explanation that makes reference to the following facts;</p> <ul style="list-style-type: none"> <li>• They could spend their money for their own benefit,</li> <li>• Or make gifts in their Wills to charity amounting to 10% or more of their estate,</li> <li>• Thereby reducing the rate of IHT from 40% to 36% or bringing it below the IHT threshold.</li> <li>• They could make large gifts to their family and provided they survive 7 years,</li> <li>• They will not form part of their estate on death.</li> <li>• These gifts are called potentially exempt transfers (PET)</li> <li>• They can use their annual allowance of £3,000 in any one tax year</li> <li>• And also use any unused part of the previous tax year's annual allowance</li> <li>• They can make any number of small gifts of up to £250 in each tax year.</li> <li>• Gifts to charities in their lifetime are exempt from IHT no matter what the size of the gift</li> <li>• They can gift away surplus income on a regular basis</li> </ul>	<b>8</b>
	<b>Question 3 total:18 marks</b>	