

## CHIEF EXAMINER COMMENTS WITH SUGGESTED POINTS FOR RESPONSES

JANUARY 2023

LEVEL 6 UNIT 12 – PUBLIC LAW

### 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

### Insufficient depth of revision

Candidates need to be able to answer four questions satisfactorily to give themselves the best chance of passing. A candidate that only superficially/inadequately understands the topic may only be able to write 150 words on the topic. Such a short answer for a 25 mark question is very unlikely to meet the pass threshold. Confusing key constitutional principles e.g. rule of law with parliamentary sovereignty, demonstrates significant misunderstanding and demonstrates superficial/inadequate revision.

Specific legislation (sometimes including sections/sub-sections of statutes) and accurately cited caselaw is usually necessary to pass problem questions and always required to score high marks.

### Insufficient breadth of revision

As mentioned above, candidates need to be able to answer four questions satisfactorily to give themselves the best chance of passing. Answering two questions satisfactorily but only writing short answers e.g., 150 words for the remaining questions, or only attempting one part of two part questions, is unlikely to pass. Although there is a choice of questions, candidates should ensure

they revise sufficient topics. They should also practice answering questions on topics in both Section A essay formats and Section B formats, to be able to answer questions in whatever format they appear on the paper.

#### **Lack of structure in answers**

Some candidates' answers were not well-organised. They were often a disparate list of points which lacked coherence and did not demonstrate sufficient understanding. This was largely due to insufficient depth of revision (see above) but also poor exam technique. Candidates should practice answering questions and planning answers as part of their revision.

#### **Lack of analysis and evaluation**

At Level 6 essay questions require candidates to be able to analyse and evaluate key constitutional principles and develop their own views. Descriptive answers will not attain high marks. In most essay questions, there was a lack of sufficient analysis and evaluation on the part of candidates.

#### **Poor application to the facts**

Problem questions require candidates to identify issues and to apply the relevant law to the facts. Although problem questions were generally done well, some candidates simply recited (insufficient) law with little application. It is essential to cite statutory authority (especially where statutes are in the statute book provided) and case law in support of answers. Even where caselaw was cited, names of cases were often only partially or inaccurately cited. Sometimes an incorrect case name cited which did not align with the decision/ratio cited. This sometimes made it difficult to identify the case concerned and therefore allocate any, or higher, marks.

## **CANDIDATE PERFORMANCE FOR EACH QUESTION**

### **Section A**

#### **Question 1**

Question 1(a) on the rule of law and the independence of the judiciary Most candidates answered (a) accurately. Lack of understanding/knowledge on modern rule of law theories e.g., Raz and Bingham generally prevented candidates from accessing full marks. In part (b) less prepared candidates often confused separation of powers with parliamentary sovereignty. Few considered the separation of powers issues arising between the judiciary and legislature, as the question required. However, the full-marks answer demonstrates it was possible to gain high/full-marks for this question.

#### **Question 2**

An essay question, requiring candidates to describe the sources of the UK constitution and critically evaluate arguments regarding its flexibility.. Prepared candidates were able to adequately describe most key sources of the constitution. Conventions were usually well explained. Few identified or explained Royal Prerogative powers. Very little caselaw was adduced, except for the higher mark scorers. Flexibility arguments usually augmented the positive impacts. However, the

high-scoring candidates indicate it was possible to score highly on this question if sufficiently prepared.

### **Question 3**

Question 3 (a) required candidates to describe the jurisdiction of the Parliamentary and Health Service Ombudsman's role as Parliamentary Commissioner for Administration. Part (b) required candidates to critically analyse the effectiveness of the Parliamentary Commissioner for Administration in providing adequate remedies for the citizen in respect of public service failure. Only one candidate attempted this question, no relevant statute/caselaw was adduced and only a superficial, general understanding of the Ombudsman role was given. Part (b) At only 121 words, it did not contain sufficient law or content to merit higher marks. The question itself was fair if candidates had adequately revised the relevant information.

### **Question 4**

This question required candidates to make specific reference to Article 10 of the European Convention on Human Rights and the doctrine of proportionality, and to critically evaluate the extent to which the strict liability offence created by the Contempt of Court Act 1981, strikes an effective balance between the press's freedom of expression and the interests of justice. Again, only one candidate attempted this question. The answer scored 14 marks meeting the pass threshold. This demonstrates that the question was accessible and adequately tested candidates' knowledge and evaluation skills.

## **Section B**

### **Question 1**

This question was not attempted by any candidates. It was a question in two parts. Part (a) required candidates to consider whether retained EU law would enable the protagonist to claim compensation and/or permit the defendant a defence in the scenario posed. Part (b) asked candidates to consider if the protagonist could rely on the Senedd Cymru's refusal to grant legislative consent (on legislation made by Westminster on an unreserved/devolved matter) as a defence to the prosecution. As no candidates attempted this question, all comments on the question performance are speculative. It may be that lack of knowledge, familiarity, or confidence with the impact of (relatively novel) retained EU law dissuaded candidates from attempting the question (for part (a)). For part (b) lack of familiarity/knowledge about the impact of devolution/devolved powers may explain their reticence to attempt it. Although the problem scenario was quite detailed and some candidates may have had to read it carefully to understand it, the question was fair provided candidates were prepared.

### **Question 2**

This was a popular judicial review question with three scenarios to consider and advise on. Eight out of ten candidates attempted this question. Marks showed it was possible to score highly on this question with good revision and understanding of the issues. The lower-scoring candidates sometimes struggled to identify which grounds of review were relevant to which facts. Some candidates who demonstrated excellent skills of application nevertheless did not score higher/full marks as they neglected to include sufficient/any relevant authority/caselaw.

### Question 3

Question 3(a) required candidates to advise the Home Secretary of their powers in relation to the given scenario. Question 3 was popular and answered by six out of ten candidates. However, some candidates, even where some correctly identified terrorism was the issue, were unaware of the relevant statutory provision. However, question (a) was fair and could be answered well with sufficient preparation. Question 3(b) required candidates to identify the relevant Public Order offences and relevant aspects of arrest in PACE, including powers, grounds, and execution. The only reason full marks were not given was that candidates had not cited the relevant sub-section of s24 PACE, despite having access to the statute book in the exam. Candidates who had prepared well generally answered this question well. It provided a good test of the candidates' ability to identify the issues, apply the law to facts and solve problems.

### Question 4

A problem question which required candidates to advise the protagonist on the likely basis of a claim in damages he could take against the newspaper which had infringed his privacy. Many candidates, even better prepared candidates, wrongly interpreted this question as a defamation question and did not always adequately consider privacy issues, Convention rights and caselaw as a result. Better prepared candidates included sufficient caselaw regarding privacy issues and some good analysis of the proportionality test when competing Convention rights were at stake.

## SUGGESTED POINTS FOR RESPONSE

JANUARY 2023

LEVEL 6 UNIT 12 – PUBLIC LAW

Question Number	Suggested Points for Responses	Marks (Max)
1(a)	<p>An answer which consists of reasoned evaluation, offering opinion/verdict which is supported with evidence.</p> <p>Marks should be distributed in the following areas:</p> <ul style="list-style-type: none"><li>• Traditional definition of the rule of law</li><li>• Modern definitions of the rule of law</li><li>• Importance of judicial independence</li><li>• A reasoned conclusion which is supported with evidence</li><li>• Response is appropriately structured</li></ul> <p>Responses should include:</p> <ul style="list-style-type: none"><li>• Definition of the rule of law (Dicey)<ul style="list-style-type: none"><li>- An absence of arbitrary power;</li><li>- Equality before the law; and</li><li>- Basic constitutional rights of individuals derived from judicial decisions</li></ul></li></ul>	10



	<ul style="list-style-type: none"> <li>• Modern definitions of the rule of law; e.g. Lord Bingham’s version: emphasis on human rights/international law</li> <li>• Importance of judicial independence</li> </ul> <p>Responses could include:</p> <ul style="list-style-type: none"> <li>• The extent to which the rule of law is values-based rather than simply content-based</li> </ul>	
<b>1(b)</b>	<p>An answer which consists of reasoned analysis, breaking down the issue into sections and using supporting evidence for and against.</p> <p>Marks should be distributed in the following areas:</p> <ul style="list-style-type: none"> <li>• Explanation of the separation of powers</li> <li>• Rationale for the doctrine</li> <li>• Relationship between executive and judiciary</li> <li>• Relationship between judiciary and legislature</li> <li>• A reasoned conclusion which is supported with evidence</li> <li>• Response is appropriately structured</li> </ul> <p>Responses should include:</p> <ul style="list-style-type: none"> <li>• Reference to the three branches of government</li> <li>• Functions and personnel of the three branches should be kept separate</li> <li>• Check and balances - separation needed as safeguard against arbitrary government</li> <li>• Executive and judiciary: <ul style="list-style-type: none"> <li>- Constitutional Reform Act 2005 (CRA): judicial appointments</li> <li>- Other safeguards; e.g. security of tenure/constitutional conventions</li> </ul> </li> <li>• Judiciary and legislature: <ul style="list-style-type: none"> <li>- CRA: removed Law Lords from the House of Lords and created Supreme Court</li> <li>- Judicial law-making through case law</li> </ul> </li> </ul> <p>Responses could include:</p> <ul style="list-style-type: none"> <li>• Historical background - Montesquieu</li> <li>• Limited powers/self-restraint of judiciary; e.g. no power to strike down statutes</li> </ul>	<b>15</b>
	<b>Question 1 total:25 marks</b>	
<b>2</b>	<p>An answer which consists of reasoned evaluation, offering opinion/verdict which is supported with evidence.</p> <p>Marks should be distributed in the following areas:</p> <ul style="list-style-type: none"> <li>• Unwritten nature of the UK constitution and main sources</li> <li>• Statute <ul style="list-style-type: none"> <li>- Definition and examples of constitutional statutes</li> <li>- Flexible</li> </ul> </li> <li>• Case law</li> </ul>	<b>25</b>

	<ul style="list-style-type: none"> <li>- Common law</li> <li>- Statutory interpretation</li> <li>- Flexible</li> <li>• Constitutional conventions <ul style="list-style-type: none"> <li>- Definition and examples</li> <li>- Flexible</li> </ul> </li> <li>• Royal prerogative <ul style="list-style-type: none"> <li>- Definition and examples</li> <li>- Flexible</li> </ul> </li> <li>• Arguments for/against flexibility</li> <li>• A reasoned conclusion which is supported with evidence</li> <li>• Response is appropriately structured</li> </ul> <p>Responses should include:</p> <ul style="list-style-type: none"> <li>• Unwritten/uncodified nature of the UK constitution <ul style="list-style-type: none"> <li>- Why it is said to be flexible</li> <li>- Main sources of the constitution</li> </ul> </li> <li>• Statute: <ul style="list-style-type: none"> <li>- Examples of constitutional statutes; e.g. Bill of Rights 1689, Parliament Acts 1911 and 1949, Human Rights Act 1998, European Union (Withdrawal) Act 2018</li> <li>- Flexible, as no need for special procedures to make constitutional changes</li> </ul> </li> <li>• Case law: <ul style="list-style-type: none"> <li>- Common law; e.g. development of civil liberties/natural justice (<u>Entick v Carrington</u> (1765))</li> <li>- Statutory interpretation (<u>Miller (No 1)</u> (2017))</li> <li>- Flexible, subject to doctrine of precedent</li> </ul> </li> <li>• Constitutional conventions <ul style="list-style-type: none"> <li>- Definition (<u>Re amendment of the constitution of Canada</u> (1982))</li> <li>- Examples, e.g. collective cabinet responsibility, Sewel Convention</li> <li>- Flexible as a non-legal source</li> </ul> </li> <li>• Royal prerogative <ul style="list-style-type: none"> <li>- Definition</li> <li>- Examples, e.g. royal assent, signing of international treaties</li> <li>- Flexible as prerogative powers can be removed by statute; e.g. Crown Proceedings Act 1947</li> </ul> </li> <li>• Arguments against flexibility <ul style="list-style-type: none"> <li>- Politically difficult to repeal some statutes; e.g. devolution legislation</li> <li>- Lack of political will/pressure on parliamentary timetable</li> <li>- Some conventions very deep-rooted; e.g. Monarch will always grant royal assent</li> </ul> </li> </ul> <p>Responses could include:</p> <ul style="list-style-type: none"> <li>• Interaction between conventions and prerogative; e.g. legal rule – Monarch can withhold royal assent, convention dictates she will not</li> <li>• Referendum locks in Scottish and Welsh devolution statutes</li> </ul>	
<b>Question 2 total:25 marks</b>		



<p><b>3(a)</b></p>	<p>A description which provides an account and how things are linked.</p> <p>Marks should be distributed in the following areas:</p> <ul style="list-style-type: none"> <li>• Background/introduction to establishment and appointment of PCA</li> <li>• Jurisdiction of PCA</li> <li>• Response is appropriately structured</li> </ul> <p>Responses should include:</p> <ul style="list-style-type: none"> <li>• Background/introduction <ul style="list-style-type: none"> <li>- Legal remedies did not provide adequate redress</li> <li>- Parliamentary Commissioner Act 1967 set up post of PCA</li> <li>- Appointed by Crown on advice of Prime Minister</li> <li>- Reports to Parliament</li> </ul> </li> <li>• Jurisdiction <ul style="list-style-type: none"> <li>- Injustice in consequence of maladministration</li> <li>- Definition of maladministration (Crossman Catalogue)</li> <li>- Bodies subject to jurisdiction</li> <li>- Exclusions from jurisdiction</li> </ul> </li> </ul> <p>Responses could include:</p> <ul style="list-style-type: none"> <li>• Role of ombudsmen more generally</li> </ul>	<p><b>10</b></p>
<p><b>3(b)</b></p>	<p>An answer which consists of reasoned analysis, breaking down the issue into sections and using supporting evidence for and against.</p> <p>Marks should be distributed in the following areas:</p> <ul style="list-style-type: none"> <li>• Jurisdiction – critique</li> <li>• Procedure <ul style="list-style-type: none"> <li>- MP filter</li> <li>- Time limits</li> <li>- Powers of investigation</li> </ul> </li> <li>• Enforcement <ul style="list-style-type: none"> <li>- lack of powers</li> <li>- reports to Parliament</li> </ul> </li> <li>• A reasoned conclusion which is supported with evidence</li> <li>• Response is appropriately structured</li> </ul> <p>Responses should include:</p> <ul style="list-style-type: none"> <li>• Jurisdiction <ul style="list-style-type: none"> <li>- Appropriateness of exclusions</li> </ul> </li> <li>• Procedure <ul style="list-style-type: none"> <li>- MP filter: Complaints must be made via MP; failure to do is an absolute bar (<u>R (Senior-Milne) v Parliamentary and Health Service Ombudsman</u> (2009))</li> <li>- Critique of MP filter – deterrent to making complaints</li> <li>- Time limit: 12 months from date of discovery</li> </ul> </li> </ul>	<p><b>15</b></p>

	<ul style="list-style-type: none"> <li>- Extensive powers of investigation; e.g. power to call witnesses/require production of documents</li> <li>• Enforcement <ul style="list-style-type: none"> <li>- No power for PCA to enforce findings/award compensation</li> <li>- Government may reject PCA’s findings (unless no cogent reasons for doing so) (<u>R (Bradley) v Work and Pensions Secretary (2008)</u>)</li> <li>- Public body that rejects PCA’s findings must report to Parliament</li> </ul> </li> </ul> <p>Responses could include:</p> <ul style="list-style-type: none"> <li>• PCA’s decisions judicially reviewable, but courts reluctant to interfere</li> </ul>	
<b>Question 3 total:25 marks</b>		
<b>4</b>	<p>An answer which consists of reasoned evaluation, offering opinion/verdict which is supported with evidence.</p> <ul style="list-style-type: none"> <li>• Contempt of Court Act 1981 – ‘strict liability rule’: Elements of the rule</li> <li>• Defences</li> <li>• Discussion of public affairs</li> <li>• Freedom of expression – Article 10 ECHR</li> <li>• Qualified right – limitations in Article 10(2)</li> <li>• Proportionality – <u>Bank Mellat</u> (2013) test</li> <li>• A reasoned conclusion which is supported with evidence</li> <li>• Response is appropriately structured</li> </ul> <p>Responses should include:</p> <ul style="list-style-type: none"> <li>• Section 1 Contempt of Court Act 1981 – ‘strict liability rule’: Elements of the rule <ul style="list-style-type: none"> <li>- Publication: s 2(1)</li> <li>- Substantial risk’ that the course of justice will be ‘seriously impeded or prejudiced’: s 2(2)</li> </ul> </li> <li>• Proceedings must be active: s 2(3) and (4), Schedule 1</li> <li>• Defences: <ul style="list-style-type: none"> <li>- Innocent publication: s 3</li> <li>- Contemporary report of legal proceedings: s 4</li> </ul> </li> <li>• Discussion of public affairs: Publication made as part of a discussion in good faith of public affairs does not infringe the</li> </ul>	<b>25</b>

	<p>strict liability rule if risk of prejudice is merely incidental: s 5 (<u>A-G v English</u> (1983))</p> <ul style="list-style-type: none"> <li>• Freedom of expression – Article 10 in relation to English legal system</li> <li>• Qualified right – limitations in Article 10(2) <ul style="list-style-type: none"> <li>- Prescribed by law - must have clear legal basis</li> <li>- Justified by reference to legitimate aim; e.g. protection of the rights of others</li> <li>- Necessary/proportionate</li> </ul> </li> <li>• Proportionality – application of Bank Mellat (2013) test: <ul style="list-style-type: none"> <li>- Objective sufficiently important to limit fundamental right?</li> <li>- Measure rationally connected to objective?</li> <li>- Do measures go further than necessary?</li> <li>- Fair balance struck between the rights of the individual and the interests of the community?</li> </ul> </li> <li>• Evaluation of balance struck by Contempt of Court Act 1981</li> </ul> <p>Responses could include:</p> <ul style="list-style-type: none"> <li>• Comparison with common law contempt of court</li> <li>• Interpretive obligation under s 3 Human Rights Act 1998</li> </ul>	
<b>Question 4 total: 25 marks</b>		

**SECTION B**

Question Number	Suggested Points for Responses	Marks (Max)
<b>1(a)</b>	<p>An answer which offers advice based on evidence. It should supply possible alternatives and pro's and con's but highlight the best option with sound justifications.</p> <p>Marks should be distributed in the following areas:</p> <ul style="list-style-type: none"> <li>• Definition of retained EU law</li> <li>• Direct EU legislation as category of retained EU law</li> <li>• Power for ministers to correct 'deficiencies' in retained EU law</li> <li>• Limited supremacy of retained EU law over pre-IP completion day UK legislation</li> <li>• Retained EU case law and when UK courts are bound by it</li> <li>• Reasoned application to the facts which is supported by authority</li> <li>• Response is appropriately structured</li> </ul>	<b>17</b>



	<p>Responses should include:</p> <ul style="list-style-type: none"> <li>• Retained EU law: ‘snapshot’ of EU law applying in UK on IP completion day</li> <li>• Direct EU legislation includes EU regulations</li> <li>• Power for ministers to adopt statutory instruments correcting ‘deficiencies’ in retained EU law, e.g. to correct inappropriate references to EU institutions/Member States</li> <li>• Supremacy of retained EU law: will prevail over pre-IP completion day Acts of Parliament but not post-IP completion day Acts</li> <li>• Explanation of retained EU case law and extent to which it is binding on UK courts</li> </ul> <p>Responses could include:</p> <ul style="list-style-type: none"> <li>• No relevant exclusions from retained EU law</li> <li>• Regulations governing departures from retained EU case law</li> </ul>	
<b>1(b)</b>	<p>An answer which offers advice based on evidence. It should supply possible alternatives and pro's and con's but highlight the best option with sound justifications.</p> <p>Marks should be distributed in the following areas:</p> <ul style="list-style-type: none"> <li>• ‘Reserved powers’ model for Wales</li> <li>• Sovereignty of UK Parliament/Sewel Convention</li> <li>• Reasoned application to the facts which is supported by authority /Response is appropriately structured</li> <li>• Response is appropriately structured</li> </ul> <p>Responses should include:</p> <ul style="list-style-type: none"> <li>• ‘Reserved powers’ model for Wales - all policy areas are assumed to be devolved unless specified as remaining with the UK Government</li> <li>• UK Parliament remains sovereign – can legislate on devolved matters even in absence of legislative consent motion</li> <li>• Sewel Convention – UK Parliament should not normally legislate on devolved issue without devolved legislature’s consent, but not legally binding (<u>Miller (No. 1) (2017)</u>)</li> </ul>	<b>8</b>
	<b>Question 1 total:25 marks</b>	
<b>2</b>	<p>An answer which offers advice based on evidence. It should supply possible alternatives and pro's and con's but highlight the best option with sound justifications.</p> <p>Marks should be distributed in the following areas:</p>	<b>25</b>

- Amenability of decision for review/standing to bring claim/remedy
- Grounds: Lord Diplock's categorisation
- Ubogu
  - Illegality: fettering of discretion
  - Illegality: relevant considerations ignored
- Guscott
  - Legitimate expectation
  - Procedural impropriety - duty to give reasons
  - Irrationality
- Dooley
  - Illegality (ulterior purpose)
- Reasoned application to the facts which is supported by authority
- Response is appropriately structured

Responses should include:

- Amenability/ Standing
  - The Agency is a public body
  - Public law matter
  - Standing - in particular SHC as a pressure group (ex p. WDM (1995))
  - Timing
  - Remedies – see below
- Ubogu
  - Illegality: Fettering of discretion: over-rigid application of policy; MCA should be willing to listen to someone with something new to say (British Oxygen v Ministry of Technology (1970));
  - Illegality: Failing to take into account relevant considerations – Thai fisheries exceed standard needed for certification (Roberts v Hopwood (1925))
- Guscott
  - Legitimate expectation - extent to which MCA should be bound by its guidelines
  - Procedural impropriety – the giving of reasons. No common law duty to give reasons, but if a decision appears irrational, decision-maker will be required to give reasons; otherwise decision will be *ultra vires* (R v Civil Service Board, ex parte Cunningham (1991))
  - Irrationality: definition of Wednesbury (1948) unreasonableness

	<ul style="list-style-type: none"> <li>• Dooley <ul style="list-style-type: none"> <li>- Illegality: Ulterior purpose: assisting conclusion of trade agreement with Peru (<u>Congreve v HO</u> (1976) and/or irrelevant consideration (<u>Padfield v Minister of Agriculture</u> (1968))</li> </ul> </li> <li>• Remedy: quashing order</li> </ul> <p>Responses could include</p> <ul style="list-style-type: none"> <li>• Nature of legitimate expectation: Lord Woolf’s categories, whether substantive or procedural (<u>ex p. Coughlan</u> (2001))</li> <li>• Whether quashing order could be prospective only</li> </ul> <p>This question should be marked flexibly; e.g. candidates who cover illegality or procedural impropriety well even if they omit irrationality can still obtain high marks. Also, discretion to award marks for other reasonable arguments.</p>	
<b>Question 2 total:25 marks</b>		
<b>3(a)</b>	<p>An answer which offers advice based on evidence. It should supply possible alternatives and pro's and con's but highlight the best option with sound justifications.</p> <p>Marks should be distributed in the following areas:</p> <ul style="list-style-type: none"> <li>• Home Secretary: power to impose terrorism prevention and investigation measure (TPIM) <ul style="list-style-type: none"> <li>- Test for imposition of TPIMs</li> <li>- Restrictions that can be imposed</li> <li>- Length of TPIMs</li> </ul> </li> <li>• Reasoned application to the facts which is supported by authority</li> </ul> <p>Responses should include:</p> <ul style="list-style-type: none"> <li>• Home Secretary’s power to impose TPIM subject to court approval (Terrorism Prevention and Investigation Measures Act 2011): <ul style="list-style-type: none"> <li>- Test: Home Secretary must reasonably believe that the individual is/ has been involved in terrorism related activity and TPIM is necessary to protect members of the public</li> <li>- Nature of restrictions: curfews, restrictions on association/use of mobile phone/accessing Internet/requirement to relocate their residence</li> <li>- Length: Initial period of one year but subject to extensions to maximum of five years if evidence of ‘new’ terrorist activity.</li> </ul> </li> </ul>	<b>8</b>

	<p>Responses should include:</p> <ul style="list-style-type: none"> <li>• Entitlement to challenge TPIM</li> </ul>	
<p><b>3(b)</b></p>	<p>An answer which offers advice based on evidence. It should supply possible alternatives and pro's and con's but highlight the best option with sound justifications.</p> <p>Marks should be distributed in the following areas:</p> <ul style="list-style-type: none"> <li>• <b>The march</b> <ul style="list-style-type: none"> <li>- Section 11 Public Order Act 1986 (POA) – Requirements for notice</li> <li>- Section 12 POA 1986 – Power of senior police officer to impose conditions</li> <li>- Grounds for imposing conditions</li> </ul> </li> <li>• <b>The meeting</b> <ul style="list-style-type: none"> <li>- Section 14 POA – Power of senior police officer to impose conditions on a 'public assembly'</li> <li>- Grounds for imposing conditions</li> </ul> </li> <li>• Arrest of protestors - lawfulness of arrest</li> <li>• Reasoned application to the facts which is supported by authority</li> <li>• Response is appropriately structured</li> </ul> <p>Responses should include:</p> <ul style="list-style-type: none"> <li>• <b>The March</b> <ul style="list-style-type: none"> <li>- Section 11 Public Order Act 1986 (POA) – Organisers must give notice unless not reasonably practicable; march response to killings in Zargastan</li> <li>- Section 12 POA – Senior police officer may give directions imposing conditions if he reasonably believes that public procession will cause serious public disorder/ damage/ disruption or has intimidatory purpose</li> <li>- Grounds for reasonable belief – disruption to crowded street market</li> </ul> </li> <li>• <b>The Meeting</b> <ul style="list-style-type: none"> <li>- Section 14 POA – powers arise if meeting a 'public assembly' (s 16)</li> <li>- Senior police officer may give directions imposing conditions if he reasonably believes that assembly will cause serious public disorder/ damage/ disruption or has intimidatory purpose: disruption includes noise which may result in persons connected with organisation not being reasonably able, for a prolonged period of time, to carry on their activities</li> <li>- Grounds for reasonable belief – complaints from embassy staff</li> <li>- PC Horan – not the most senior officer present</li> </ul> </li> </ul>	<p><b>17</b></p>

	<ul style="list-style-type: none"> <li>• <b>Arrest</b> <ul style="list-style-type: none"> <li>- Power of arrest – s 24(3) PACE: reasonable grounds for suspecting an offence has been committed, but as directions were unlawful, no offence has been committed (failing to comply with condition imposed by police)</li> <li>- Arrest necessary – s 24(5) PACE - to enable the name of the person in question to be ascertained (s 24(5)(a))</li> <li>- Manner of arrest – fact of arrest and grounds, even if obvious (s 28)</li> <li>- PC Horan does not state grounds of arrest adequately</li> </ul> </li> </ul> <p>Responses could include:</p> <ul style="list-style-type: none"> <li>• Breach of the peace – whether police have power to disperse meeting due to possible breach of the peace (<u>Bibby v Chief Constable of Essex Police</u> (2001))</li> <li>• Compliance with s 30 PACE</li> </ul>	
<b>Question 3 total:25 marks</b>		
<b>4</b>	<p>An answer which consists of reasoned analysis, offering opinion which is supported with evidence.</p> <p>Marks should be distributed in the following areas:</p> <ul style="list-style-type: none"> <li>• How claimants enforce privacy in English law</li> <li>• Whether there is a reasonable expectation of privacy</li> <li>• Balance between Article 8 and Article 10 rights with detailed arguments</li> <li>• Reasoned application to the facts which is supported by authority</li> <li>• Response is appropriately structured</li> </ul> <p>Responses should include:</p> <ul style="list-style-type: none"> <li>• No right to privacy in English law (<u>Wainwright v Home Office</u> (2006))</li> <li>• Human Rights Act 1998: Horizontal effect of Convention rights (<u>Douglas v Hello! Ltd</u> (2005)) <ul style="list-style-type: none"> <li>- Article 8: ECHR: right to private and family life</li> <li>- Development of breach of confidence as vehicle for enforcing Convention rights</li> </ul> </li> <li>• Reasonable expectation of privacy <ul style="list-style-type: none"> <li>- Analysis of newspaper article and photograph: whether newspaper entitled to publish them – individually and together</li> </ul> </li> <li>• Article 10 ECHR: Newspaper’s right to freedom of expression</li> <li>• Balancing Jeff’s right to privacy with the Noble’s freedom of expression <ul style="list-style-type: none"> <li>- Proportionality: Where two Convention rights are involved (<u>Campbell v MGN</u> (2005))</li> </ul> </li> </ul> <p>Responses could include:</p> <ul style="list-style-type: none"> <li>• Development of tort of misuse of private information</li> </ul>	<b>25</b>

	<ul style="list-style-type: none"><li>• Analysis of case law such as <u>Murray v Express Newspapers Ltd</u> (2007) regarding circumstances leading to a reasonable expectation of privacy</li><li>• Accurate information relating to a possible defamation claim (although not strictly relevant to the question, Defamation Act 2013 is referenced at 4.4 of the Specification.)</li></ul>	
	<b>Question 4 total:25 marks</b>	

