

**CHIEF EXAMINER COMMENTS WITH  
SUGGESTED ANSWERS**

**JANUARY 2021**

**LEVEL 6 - UNIT 17 – CONVEYANCING**

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

The purpose of the marking scheme 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 2021 examinations. The marking scheme 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 suggested answers.

Candidates and learning centre tutors should review the marking scheme 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**

Candidate performance was good with Q1(b) being the most well answered. A common error was listing the name of the form without using the technical term for it i.e TA6 and TA10 rather than Property Information Form.

The stronger candidates provided a lot more information and expanded on every point to gain any additional marks that were available. These showed particular understanding of the law and offered a practical approach to the question and the advice they were to give to their client.

The weaker candidates did not expand on their answers and many were very sparse in detail. Some suggested guess work had taken place and that there was simply no knowledge applied. The searches in particular seemed to cause some confusion with the weaker candidates applying the same answer to different questions.

## CANDIDATE PERFORMANCE FOR EACH QUESTION

### **Question 1(a)** – Money Laundering

A lot of candidates explained what ID was required but failed to explain what Money Laundering actually was or referred to the incorrect legislation in their answer.

#### **(b)** – Documents to be included in contract bundle

Most candidates answered this question well, but marks were easily lost for not referring to the forms as their technical names (TA6, TA10) or for not advising that title information must be less than six months old.

#### **(c)** – personal indemnity covenant

Most candidates dealt with this well but did not embellish on what the clause would actually mean for the client, or that the contract needed to allow for this covenant to be included within the transfer via the special conditions.

### **Question 2(a)** – Requisitions on title

Most candidates dealt with this well and identified the questions they needed to ask the other side in particular. A handful of candidates opted to answer as if requisitions meant searches, and this immediately caused confusion for the later question needing this response. A lot of candidates split the section 104 and section 38 agreements as two separate answers rather than as one.

#### **(b)** – Searches to be carried out

This was dealt with well by most candidates however many forgot to list their reason for choosing the search and simply listed them which is not what was asked of them.

#### **(c)** – Contaminated land

This was probably the most poorly dealt with question on the paper. Those candidates with a distinction really managed to handle this well however most candidates opted for an indemnity policy but did not explore any other avenue or what it meant for the client or lender.

### **Question 3(a)** – Deposit as agent

Candidate performance was mixed for this question. A lot of candidates were able to compare agent and stakeholder deposits but did not expand on the risks or practical issues.

#### **(b)** – Simultaneous completion

Candidate responses were patchy in regard to this. Some candidates did not refer to the fact that the property was not ready for occupation and that they would need to split the transactions and 'break the chain'. Others did not seem

to pick up on the fact that the sale would not just wait for the purchase in practice.

**Question 3(c)** – Exchange of contracts

A lot of candidates wrongly opted for formula C or listed the formulae without actually deciding on a method for exchange. This was not necessary as it did not achieve any additional marks for the candidate. Many calculated the deposit incorrectly or did not factor it into the process at all and many did not refer to the documents needing to go across to the other side the next day.

**3(d)** – delayed completion

This was poorly answered by a lot of candidates. Many missed the mark entirely and started talking about serving notice etc., without looking into the actual practicalities of the situation. Not many candidates suggested waiting the 48 hours to see if the transaction was resolved and did not explore the related transaction and implications.

**Question 4(a)** – Undertakings

Candidates gave either very strong answers that gained almost every mark or were very poor and simply listed one or two completion tasks. Some candidates did not know what an undertaking was, and a few relied on guess work.

**(b)** – pre completion searches

Nearly all candidates identified the K16 and OS2 needed. A lot of candidates lost marks for failing to mention the priority period was in working days and confusing the applicant and the firm. A noticeable number of candidates had completely different timescales for the priority searches, notably 14 days, and many failed to identify both companies when undertaking their searches. Candidates would refer to one or the other, but not which, and this lost them an additional mark.

**SUGGESTED ANSWERS**

**LEVEL 6 - UNIT 17 – CONVEYANCING**

**Question 1(a)**

The Money Laundering Regulations 2017, SI 2017/692 (**MLR**) require every conveyancer involved in a property transaction to take sufficient steps to prevent money laundering by verifying the identity of their client and the source of their funds. Money laundering occurs where the proceeds of criminal activity are converted (or laundered) into legitimate funds by being involved in a legitimate transaction. In appropriate circumstances, suspicions as to the legitimacy of the client or their funds must be reported to the relevant authorities – failure to comply with the relevant requirements can result in the commission of a criminal offence by the conveyancer. MLR requires proof

of physical identity (eg a passport) and address (eg a utility bill which is not more than 3 months old).

In addition, instances of property and registration fraud are increasing. It is important to establish that the professed seller of a property does in fact have the right to sell the property and to receive the proceeds of sale. The buyer's lawyers will be expecting us to give undertakings to that effect in accordance with the Law Society Code for Completion by Post. The Law Society has published a Practice Note on this topic and has also published guidance jointly with the Land Registry. Failing to take adequate steps is a matter of professional misconduct and may give rise to liability for breach of trust and/or negligence.

### **1(b)**

These are the documents required for the contract pack for the sale of Sussex Street

- Draft contract in duplicate
- Official copy of the register
- Official copy of the title plan
- (both of the former must be less than 6 months old)
- Property Information (TA6)
- Fittings and Contents Form (TA10)
- Documents to accompany/support TA forms (if specific examples given)
- EPC (if not already supplied by the estate agent)
- Conveyance dated 23 January 1903

### **1(c)**

Entry 3 in the Proprietorship Register for Sussex Street reveals that our clients have given a personal indemnity covenant in relation to the restrictive covenants contained in the Conveyance dated 23 January 1903 (entry 1 in the Charges Register). This is consistent with the creation of a chain of indemnity covenants between the original covenantor and subsequent owners of the burdened land. Notwithstanding the sale of Sussex Street, our clients will remain liable to be sued on that indemnity covenant should Mr and Mrs Ross subsequently breach the terms of the restrictive covenants. Consequently, our clients will require the benefit of an indemnity covenant from Mr and Mrs Ross in the transfer to protect our clients against the consequences of such a breach. Notwithstanding Standard Condition 4.6.4, it is usual practice to stipulate expressly in the sale contract that such an indemnity covenant must be provided in the transfer.

### **Question 2(a)**

The following requisitions should be raised:

*Please supply a copy of the Indenture dated 15 May 1832 made between (1) Thomas Lionel Jeffries, Robert Holmes and James Martin and (2) Charles Bramhall.*

REASON: The Indenture contains "easements, restrictive covenants and other stipulations" that we need to consider given that they will bind the leasehold

title being created in favour of our clients. The Indenture is referred to on the title.

*Please supply a copy of the planning consents for the Development and confirm that all conditions have been or will be complied with.*

REASON: We need to ensure that the Development (and therefore the Property) has the benefit of planning permission and that all planning conditions (eg in relation to remediation) have been complied with. Credit any reference to listed building consent - Park View is described as a former 'mansion' house.

*Please provide a copy of the Building Regulations approval for the Development.*

REASON: We need to ensure that the Development has been built in accordance with Building Regulations.

*Please provide a copy of the Estate Plan and Form CI.*

REASON: The estate layout plan should have been approved by HM Land Registry. Form CI will show: (a) the location of the Building (and therefore the Property) in relation to the Developer's title, and (b) any incumbrances affecting the Property.

*Please provide the NHBC registration number for Park View Mansions (2019) Limited.*

REASON: This will enable us to confirm online that the Developer is registered with the NHBC and that the Property is covered by an NHBC warranty.

*Please provide a copy of: (a) the section 104 agreement made between the Developer and the local water company, and (b) the section 38 agreement made between the Developer and the local highway authority.*

REASON: The Developer's Information Sheet states that the sewers on the estate and the Roadway will be adopted: therefore, we need to confirm that the relevant agreements are in place and bonds have been provided.

*Please delete the words 'for identification purposes only' in Part 1 of Schedule 1.*

REASON: This wording will be unacceptable to HM Land Registry for the purposes of registering the Lease.

## **2(b)**

The following searches should be carried out:

1. CON29R – to identify issues which are not land charges but which are within knowledge of LA for the CON29, eg road adoption
2. LLC1 - to determine if any local land charges affect Flat 4.

3. CON290 – to determine if there are any potential commons rights or registrations or TVG registrations (only part of the site was a filling station).
4. A desktop environmental search – contamination is a distinct possibility given the past use as a petrol filling station. **[MARKING NOTE: Credit may also be given for any reference to the Law Society Practice Note on contaminated land]**
5. CON29DW – a drainage and water search to determine if the Developer has entered into a bond with the local water authority.
6. A flood search – Wisbech's location in the Fens presents a risk that the Building may be affected by flooding.
7. Companies House searches – against both the Developer and the Management Company to confirm that they are active.
8. Search of NHBC website – to confirm that the Developer is registered with them.

## **2(c)**

The presence of contamination presents the risk of on-site or off-site environmental harm. Ownership of the Property might, in certain circumstances, make our clients responsible for on-site and/or off-site remediation if this is required by the relevant enforcement authority. This may impact on its current or future value and/or may make it more difficult to mortgage.

We would need to report this to our clients' lender and take their instructions, as well as advising our client. We should also consider advising our clients as to the steps which they might wish to take to protect themselves (eg asking the Developer (or relevant clean-up contractor) to provide a warranty that the Development has been remediated in accordance with the terms of the planning permission, or obtaining a letter of reliance from any consultant who certifies that that remediation has occurred, or asking the Developer to obtain insurance, or asking for a copy of the planning authority's confirmation that the remediation condition has been satisfied.

## **Question 3(a)**

Paying the deposit to the Developer's Lawyers 'as agent' means that the money immediately belongs to the Developer, to whom it may be released without further reference to the Buyers. Many developers require a deposit to be paid in this way so that they can use the money to fund the cost of the continuing development works, so this requirement is likely to be non-negotiable.

The risk to our clients is that if the Developer fails to complete, they may find it difficult to recover the deposit (particularly if the Developer were subsequently to become insolvent); this would not be the case if the deposit were being held by the Developer's Lawyers as stakeholder.

Here, our clients will have the benefit of NHBC warranty cover (essentially insurance against the risk of the deposit being lost should the Developer fail to complete as the result of insolvency or fraud). Immediately prior to exchange, a Companies House search should also be carried out against the Developer to confirm that it is still active.

Ordinarily, our clients would doubtless want to use the deposit received in relation to Sussex Street (£11,775) to part-fund the deposit for Flat 4 (see Standard Conditions 2.2.5 and 2.2.6). However, this is only possible if the deposit which is paid 'up the chain' will be held 'as stakeholder' which would not be the case here. Unless Touchstone Law LLP agreed otherwise, our clients would have to fund the entirety of the deposit for Flat 4 from their own resources.

### **3(b)**

In the case of Sussex Street, fixing the date for completion is straightforward: it is 20 working days after exchange (barring agreement on some other date).

In the case of Flat 4, the date for completion is not fixed by reference to the date of exchange or any other 'fixed' date; instead, it is determined by reference to one or both of two 'floating' dates (i.e., the date on which the Practical Completion Notice is served or, if later, the date on which the Developer's Lawyers provide satisfactory proof that the NHBC Buildmark cover is in place). Each of these 'floating' dates lies entirely within the Developer's control.

This means that achieving simultaneous completion on both properties will be all but impossible and our clients should proceed on the basis that it will not happen. Instead, they should look to complete the sale of Sussex Street as quickly as possible, and if needed should find temporary accommodation elsewhere (e.g., renting, or with family/friends) until they can complete the purchase of Flat 4.

### **3(c)**

Formula B is the formula that will most likely be used as there is no onward chain. Following exchange, we will send a cheque for £31,000 ((325,000 x 10%) - £1,500) to the Developer's Lawyers, together with our client's signed and dated part of the contract. Formula B contains an undertaking that the contracts will be posted that day and are held to the other side's order pending posting.

### **3(d)**

Completion should occur before 2pm on the contractual completion date, in accordance with Standard Condition 6.1. If this does not occur due to the buyers' default, they will be in breach of contract, which will entitle our clients to claim compensation from the Buyers at the contract rate, in accordance with Standard Condition 7.2. They will also be entitled to damages for any loss which they suffer as a result of the Buyers' breach (e.g., having to pay for rented accommodation which they have booked from the contractual completion date but which (in the event) they could have booked for a shorter

period), but those damages must be reduced by the amount of any compensation which is received.

Our clients potential losses within the next 48 hours are likely to be modest, but it should not be assumed that the sale will complete within 48 hours: Touchstone Law LLP are holding a mortgage advance from Birmingham Midshires, who will require the advance to be returned to them in accordance with the UKFMLH requirements if the period of delay exceeds one working day, and if that happens the advance will have to be requested again, which may well impact on when the Buyers will actually be able to complete.

For the time being, it may be best to allow the Buyers the time requested before taking any formal steps under the contract (there being no obligation to serve a notice to complete).

#### **Question 4(a)**

Under the Law Society's Code for Completion by Post 2019, I will give the following undertakings in relation to Sussex Street:

1. Before completion, that I have the Sellers' authority to receive the completion monies on completion and that I have the authority of CBS to receive the sum intended to repay it.
2. On completion, that I have sufficiently identified CBS for the purposes of the Buyer's application to HM Land Registry and I will redeem the charge to CBS, and that I will comply with agreed completion instructions and arrangements provided by the Buyer's lawyers.
3. After completion, that:
  - (a) I will hold the deeds and documents to the order of the Buyer's Lawyers from the point of completion
  - (b) on the same day I will notify the Buyer's Lawyers and the estate agent that completion has occurred (and that, in the case of the agent, the keys to Sussex Street can be released);
  - (c) no later than the working day after completion I will confirm to the Buyer's Lawyers in writing that completion has occurred and will send all necessary documents to them at their own risk by first class post or DX;
  - (d) I will notify the Buyer's Lawyers as soon as I receive notification that the charge in favour of CBS has been discharged (electronically or by DS1).

#### **4(b)**

The following pre-completion searches should be carried out in relation to Flat 4:

1. K16 bankruptcy searches against our clients Stefan Hubner and Gillian Anne Hubner. They are using a mortgage advance from Cambridge Building Society (CBS), who will not wish to advance money to a person who is bankrupt. The search result gives a priority period of 15 working days within which to complete the mortgage. The applicant is Kempstons.

2. Searches at Companies House against both Park View Mansions (2019) Limited and Park View Mansions (Management) Limited to confirm that both are still active. There is no priority period. The applicant is Kempstons.
3. An OS2 search (official search of part with priority) at HM Land Registry. This search: (a) confirms that no adverse entries have been made on the title since the date/time of the official copies previously supplied, and (b) 'freezes' the title so as to confer priority on the applicant in relation to the intended dealing in their favour. The applicant will be CBS as prospective chargee, but the search will also protect the clients as prospective tenants. The priority period within which to register (a) the grant of the lease, and (b) the charge, is 30 working days from the date of the search result.