

CHIEF EXAMINER COMMENTS WITH SUGGESTED POINTS FOR RESPONSES

JANUARY 2022

LEVEL 3 - UNIT 13 - THE PRACTICE OF EMPLOYMENT 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 2022 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

Due to the limited number of candidates, caution needs to be taken in respect of making any general comments of the approach taken by candidates. There continues to be a high pass rate for this paper, which indicates that those candidates who sit the exam, on the whole, have a strong interest in the subject. Candidates are however reminded that not all questions in the assessment can be discerned from the pre-seen materials. In this assessment it was clear that where a question had not been pegged to the pre-seen materials, candidates did not do as well. In particular candidates are reminded not to over emphasise the employment law aspects in their revision, but to consider the practice elements as well.

The specification is, to some extent, fairly narrow. This has meant that there is a tendency for candidates to write down pre-constructed answers. The problem is that the answer they have does not always fit with the question being asked, e.g. writing about redundancy generally when the question only relates to consultation. Candidates are reminded that it is vital that they do not just focus on similar questions in previous papers, and have a prepared answer. When this happens it indicates that the candidate does not really understand that aspect of practice, but instead is relying on information that may or may not be appropriate.

CANDIDATE PERFORMANCE FOR EACH QUESTION

Question 1(a)

Candidates were able to gain good marks on this question (most getting 4/5), a proportion did unfortunately include self-funding and legal aid/help, which were clearly not an option if regard was had to the scenario.

(b)

Some candidates did very well on this question, gaining a high number of marks. Where candidates did poorly it was because they failed to read the question properly and subsequently wrote all they knew about redundancy, rather than focusing on the consultation requirements.

(c)

Generally candidates did well on this question, however some were unaware of the current statutory cap, relying on the previous amount. As the amount is altered each April there should be no excuse for not knowing the current figures.

Question 2(a)

Most candidates were able to gain at least two marks on this question on maternity pay. Again a number of candidates were unaware of the current statutory maternity pay rates which are also introduced each April. Unlike question 1c there was no requirement in this question for the candidate to make calculations.

(b)

Candidates understood the area, which had been clearly signposted in the pre-seen materials. Where candidates did not gain full marks, it was due to not expanding on the answer e.g. explaining fully the requirements under s.18 and applying fully to the scenario.

(c)

A substantial number of candidates seem to focus on the 'core' elements of the specification e.g. the Equality Act 2010, and do very little in the context of the actual procedure at Employment Tribunals. This meant that the marks given for this question varied immensely (some candidates having a thorough knowledge and therefore gaining high marks, others gaining one or two).

2(d)

No real issues with this question, candidates were able to identify the orders that the tribunal could consider in the context of the scenario.

Question 3(a)

Almost universally well done, with most candidates gaining the majority of the marks. Minority did not consider whether had been dismissed or not.

(b)

A very general question requiring the candidate to consider the types of potentially fair dismissal under s.98. A minority of candidates did not do well on this question, mainly due to a lack of knowledge of the section.

(c)

Only a minority of candidates were able to gain full marks on this question concerning the reduction of compensation. Again this is likely due to the issue being outside of the 'norm' in terms of their learning. The question was clearly signposted in the pre-seen materials and so should have been an easy four marks.

Question 4(a)

No issues identified for this question, candidates had a good understanding of working time and were able to write about it in some depth. Where marks were dropped it was due to not writing to the scenario, i.e. writing too broadly about working time.

(b)

All candidates recognised that the question concerned the potential for a mobility clause. Again where candidates failed to maximise their marks it was due to the fact that they did not specifically apply the law to the scenario.

(c)

Almost universally candidates recognised that the question related to a s.1 statement. What was concerning was that a minority did not realise that it was a day on right. It has been over a year since the change.

(d)

Not surprisingly, those who did not really understand how s.1 statements operated in question 4c struggled to answer this question properly.

SUGGESTED POINTS FOR RESPONSE**LEVEL 3 - UNIT 13 - THE PRACTICE OF EMPLOYMENT LAW**

Question Number	Suggested Points for Responses	Max Marks
1(a)	<ul style="list-style-type: none">• Via a 'no win, no fee' arrangement.• Either be a Conditional Fee Agreement or a Damages Based Agreement.• Both of these are contingency fee-based arrangements.• BTE Insurance• May have Legal Expenses Insurance• Included under home contents, motor or bank account insurance.	5
1(b)	<ul style="list-style-type: none">• Identify the employees who are at risk of redundancy,• must warn the employees (Edward has received a letter),• must consult individually,• request volunteers (even though all of them are to be made redundant)• provide the employees with adequate information.• Alternatives to redundancy must be considered.• Employees must be notified of the decision• and informed of their redundancy payments.• As there are only five employees there is no minimum consultation period - s.188 TULR(C)A 1992.	6
1(c)	<ul style="list-style-type: none">• The Basic Award for redundancy• Calculated based on age, for redundancy each complete years' work• carried out between the ages of 22 – 40• Edward Tindle is aged 36• Has worked for Corton Industry for 12 years• Although Edward Tindle's weekly pay is £648.00 per week the statutory cap is fixed at £544.• Edward Tindle will therefore be paid 12 x £544• = £6,528.00.	6
Question 1 Total: 17 marks		

Question Number	Suggested Points for Responses	Max Marks
2(a)	<ul style="list-style-type: none"> • Phoebe may have more than the amount of pay under her contract of employment • Statutory Maternity Pay (SMP) is paid for up to 39 weeks. • 90% of your average weekly earnings (before tax) for the first 6 weeks • £151.97 or 90% of your average weekly earnings (whichever is lower) for the next 33 weeks 	4
2(b)	<ul style="list-style-type: none"> • S.18 Equality Act 2010 • Pregnancy and maternity discrimination • occurs where an employer treats a woman unfavourably • during the protected period, because of her pregnancy • Phoebe is in the protected period (ends after maternity leave) • Has potentially been treated unfavourably because she has not been offered the manager role. • Sex is not the protected characteristic as the person promoted is also female. • Suggestion from case study that decision linked to pregnancy. 	6
2(c)	<ul style="list-style-type: none"> • Rule 53 Tribunal Rules of Procedure 2013 • conduct a preliminary consideration of the claim with the parties • and make a case management order (including an order relating to the conduct of the final hearing); • determine any preliminary issue; • consider whether a claim or response, or any part, should be struck out under rule 37; • make a deposit order under rule 39; • explore the possibility of settlement or alternative dispute resolution (including judicial mediation). 	6
2(d)	<ul style="list-style-type: none"> • A tribunal can order compensation. • There is no statutory limit on the amount a tribunal can award • make a recommendation, • and/or make a declaration as to the rights of the parties 	4
Question 2 Total:		20 marks

Question Number	Suggested Points for Responses	Max Marks
3(a)	<ul style="list-style-type: none"> • Is an employee • Not in excluded category of employment • Has the required 2 years continuous employment • He has been dismissed by the employer • Is within the 3 month time limit • Is eligible to make a claim 	6
3(b)	<ul style="list-style-type: none"> • S.98 ERA 1996 • Capability • Conduct • Redundancy 	4

	<ul style="list-style-type: none"> • Statutory illegality • Some other substantial reason • In Rodney Simpkins case would be conduct • In respect of taking the goods from the warehouse 	
3(c)	<ul style="list-style-type: none"> • s.207A of the Trade Union and Labour Relations (Consolidation) Act 1992. • If Rodney Simpkins is successful in a claim for unfair dismissal the amount awarded may be reduced by up to 25% • if it is shown that the employee unreasonably failed to follow the ACAS code • by refusing to attend a disciplinary hearing. 	4
Question 3 Total:		14 marks

Question Number	Suggested Points for Responses	Max Marks
4(a)	<ul style="list-style-type: none"> • Starting point will be the contract of employment • Regulation 4 Working Time Regulations 1998 • an employee's working time shall not exceed an average of 48 hours for each seven days. • The period of time proposed by Tina is 6 months (longer than the 17 week reference period) therefore breach. • Choose to work the 60 hours if the employees have signed an 'opt out', • otherwise they can insist on 48 hours. • Note that staff under 18 they cannot be compelled to work more than 40 hours per week. 	6
4(b)	<ul style="list-style-type: none"> • Starting point will be the employee's current contract • Will depend if there is a mobility clause • The clause require employees to work at more than one location. • Must be enforced reasonably. • In the present case not likely to be enforceable as 60 miles is not a reasonable distance to expect individual employees to travel. • United Bank Ltd v Akhtar (1989) 	6
4(c)	<ul style="list-style-type: none"> • Tina Reed does not have provide employees with a written contract of employment (1) • S.1 ERA 1996 (1) • Provides that a written statement of particulars of employment needs to be provided (1) • To a worker (1) • Day one right. (1) 	4
4(d)	<ul style="list-style-type: none"> • S.11 ERA 1996 • Where an employer does not give a worker a statement as required by section 1 • the worker may require a reference to be made to an employment tribunal • to determine what particulars ought to have been included 	3
Question 4 Total:		19 marks