

CHIEF EXAMINER COMMENTS WITH SUGGESTED POINTS FOR RESPONSES

JANUARY 2022

LEVEL 6 – UNIT 18 – CRIMINAL LITIGATION

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

The overall approach all candidates to the paper was appropriate. The large majority of candidates had ensured that they were aware of the relevant sentencing guidelines for the offences in question and generally applied these accurately and appropriately. In general, answers did deal with the specifics and law and procedures were related to the relevant facts. As a result, there were fewer answers which seemed to consist largely of pre-digested generic information. One partial exception was Question 3(a) where a number of candidates still seemed to be unaware of the appropriate format for a defence statement, and some produced a document which bore a closer resemblance to a witness statement.

The candidates generally seemed happier dealing with questions which relate to procedures and the various stages in the litigation process than with those which deal with law and evidence, particularly where multiple issues need to be brought into a coherent whole. The two weakest questions overall were undoubtedly Q3 (b) and Q4 (b), both of which required detailed discussion of legal and evidential issues.

CANDIDATE PERFORMANCE FOR EACH QUESTION

Question 1(a)

This was well answered by most candidates, with a significant number achieving full marks. Marks were lost by failing to identify the full consequences of not accepting a VIPER procedure or inaccuracy or omission in describing the procedure.

(b)

Some candidates went into excessive detail on the general interview process. However, the main reason why marks were lost was candidates merely mentioning the need for an appropriate adult without considering who would, and would not be an appropriate adult in this particular case, and/or omitting to mention that the appropriate adult is not bound by confidentiality.

(c)

Candidates were better at recognising the salient facts which were relevant, in particular the youth of the defendant, the fact that answering questions would lead to selective answering because of the need to avoid giving certain information. Weaker answers were those which did not apply this information.

(d)

Some candidates appeared unaware of the change in the law whereby the Youth Court can now commit for sentence. Some answers did not deal properly with the involvement of an adult Co accused, in particular failing to stress that the juvenile would still be dealt with in the Youth Court unless the interest of justice demanded otherwise. Most candidates applied the sentencing guidelines, some failed to give sufficient weight to the reduction appropriate for a juvenile of this age as compared to an adult.

Question 2(a)

This question was generally well answered. Candidates generally identified the correct procedure and explained the factors to be taken into account in the allocation decision. Most candidates also looked at the offences in the light of the sentencing guidelines, although not always completely accurately. Additional issues such as bail, legal aid and reporting restrictions were generally not referred to.

(b)

The majority of candidates correctly identified but this involved the offence of absconding, although a minority confused this with breach of bail conditions, and a different minority displayed some confusion as to the consequences of the offence as opposed to the breach. Candidates generally dealt well with the concept of reasonable excuse and immediate advice to the client, although relatively few went on to consider the likely outcome of the subsequent hearing in terms of the ongoing remand.

2(c)

Most candidates recognise the possible availability of a video link, but relatively few addressed the potential difficulties of arranging this given the location of the witness. The discussion of admitting the evidence as hearsay was somewhat variable. A number of candidates did not look at the precise criteria for admission under the criminal justice act, and some were over optimistic as to the possibility of admission with consent.

(d)

Virtually all candidates recognised that this raised ethical issues. The majority correctly identified that the specific issue was the requirement not to mislead the court. A minority of candidate's were too quick to conclude that it was no longer possible to represent the client, or that the point already been reached when the client could only be represented by putting the prosecution to proof. The situation was more nuanced.

Question 3(a)

As noted above, some candidates only provided information relevant to the offence of handling the jewellery. Some candidates still appear unfamiliar with the format required for such statements. Some candidates also erred on the side of providing excessive detail, in some cases virtually providing a witness statement. Most candidates did identify that the case turned on mistaken identity and focused on matters relevant to that and to the alibi.

(b)

Again as noted above, some candidates treated this as relating only to issues relating to the former co-accused. There are a considerable number of issues that require discussion, in particular what the actual issue is between prosecution and defence, namely mistaken identity in relation to the jewellery and lack of *mens rea* in relation to the motorcycle. There needed to be a discussion of the Turnbull guidelines and their applicability to the facts of the case, there are issues in relation to adverse inferences from the no comment interview when the defendant is now relying on an alibi. The prosecution would be unlikely to obtain leave to reduce the bad character of the defendant as related to a matter in issue, as the record relates to different types of offence which do not involve dishonesty. It would be necessary to establish whether or not the former co-accused, who is of course now a competent and compellable witness for the prosecution, is himself of bad character. Cross examination of this witness will inevitably involve imputations of lying.

Question 4 (a)

This was generally well answered, with many candidates securing full marks. Issues relating to means were better handled in those relating to merits, with some candidates failing to recognise loss of reputation, and others who recognise the risk of a custodial sentence not explaining exactly why this offence might attract a custodial sentence.

(b)

Some candidates completely missed the point of this question or demonstrated an inability to deal with the issues. A number who did address what self-defence amounts to failed to distinguish

between those aspects where the situation had to be assessed on the basis of what the defendant honestly believed the situation to be, and those where the test was what was reasonable. Some answers failed to explain the incidents of the burden of proof. The defence has to raise the issue of self-defence so that it becomes live, but the full legal and evidential burden then shifts to the prosecution to the criminal standard.

4(c)

Most candidates identified a number of the issues that could be brought out, in particular the potential impact on the defendant's mother. The potential for incorporating anger management interventions in a community order was not always identified, and some answers did not fully recognise the need to mitigate against custody, and therefore to argue for a suspended sentence if the custody threshold was crossed.

(d)

The majority of candidates correctly identified that the appropriate appeal was under s 108 Magistrates Courts Act to the Crown Court by way of retrial. The potential risk of a higher sentence if the appeal was unsuccessful was not always appreciated or mentioned. A smaller minority than usual wrongly addressed an appeal from the Crown Court to the Court of Appeal.

SUGGESTED POINTS FOR RESPONSE

LEVEL 6 – UNIT 18 – CRIMINAL LITIGATION

Question Number	Suggested Points for Responses	Max Marks
1(a)	<p>Where, as here, there is a known and available suspect an identification procedure should be undertaken unless there is reason to believe that it would not have any utility.</p> <p>VIPER is the preferred option as it is considered the most objective method and least likely to produce anomalous results.</p> <p>The VIPER procedure is under the control of an independent identification officer.</p> <p>Eight standardised video clips of comparators together with a similar standardised video clip of the suspect will be shown to each witness separately. The comparators should be chosen to resemble the suspect. Any distinguishing marks such as scars or tattoos can be digitally removed or replicated on all images.</p> <p>The defence is entitled to see the initial descriptions given by the intended witnesses and is also entitled to make representations about the suitability of the comparator videos.</p> <p>The defendant must consent, but if consent is withheld the police may proceed to alternative, potentially more prejudicial forms of identification such as the use of covert video material or a group identification.</p> <p>A refusal to consent can be given in evidence and may give rise to adverse inferences.</p>	7

<p>1(b)</p>	<p>As Karl Lovell is a juvenile an appropriate adult must be present at the interview. As he is estranged from his parents any suggestion by the police that one of them is invited to be present should be resisted. His sister would be an appropriate family member, but in her absence an independent person such as a social worker may be utilised.</p> <p>The appropriate adult is not subject to any duty of confidentiality. Generally the interview will take place as normal with an audio recording being made and under caution.</p> <p>The requirement to provide regular rest and refreshment breaks if the interview is prolonged should take account of the suspect's age.</p> <p>The legal representative will be able to intervene if appropriate and give confidential legal advice by pausing the interview.</p>	<p>6</p>
<p>1(c)</p>	<p>There are in effect two viable approaches, namely to answer all questions or to answer none by giving a "no comment" interview. Answering selectively is tactically unwise. It gives an impression of shiftiness or wishing to conceal matters which will be likely to affect the assessment of the defendant by the court at any trial.</p> <p>Answering all questions allows the defendant to put his version of events on record at the earliest opportunity. If he has a convincing explanation this may even result in the police taking no further action. Any matters which are mentioned cannot subsequently be the subject of adverse inferences for nondisclosure.</p> <p>However, particularly for a defendant such as Karl Lovell with no previous experience of police interview, the experience can be demanding and there is a risk of self-incrimination or disclosure of matters that are not presently known to the police.</p> <p>Giving a no comment interview avoids any possibility of self-incrimination.</p> <p>However, it does raise the possibility that the prosecution will seek to invite the court to draw adverse inferences from silence if matters are subsequently raised by the defendant which he could reasonably be expected to have disclosed in interview.</p> <p>This adverse consequence can be mitigated by drafting a prepared statement setting out those matters which the defendant wishes to put on record at this stage and then giving a no comment interview.</p> <p>Here it appears that Karl Lovell has been identified as responsible for the injuries and the DNA evidence clearly associates him with the knife. If he were to give answers or include a prepared statement the material that he is disclosed in his instructions this would weaken to some extent the case in relation to the malicious wounding, and while amounting to an admission in relation to the bladed article does provide context and an element of mitigation in that respect. The appropriate advice would appear to be to give a no comment interview with prepared statement, although this may simply amount to an admission of presence and denial of any other involvement. Giving full answers would only be recommended if Karl Lovell is particularly confident and resilient.</p> <p>The ultimate decision is for the client.</p>	<p>6</p>
<p>1(d)</p>	<p>As this is not a charge of homicide or serious firearms offence and there is no indication at this stage that Karl Lovell can be regarded as</p>	<p>9</p>

	<p>dangerous there is a strong expectation that his case will be dealt with in the Youth Court. This court is specially equipped to deal with juveniles and has the full range of sentencing options available to it.</p> <p>However, as Karl Lovell is jointly charged with an adult the initial appearance may take place in the adult magistrates court. The further disposal of the case will depend on the pleas entered by each defendant and the allocation decision in relation to the adult. If the adult is sent to the Crown Court or elects Crown Court trial and the juvenile indicates a not guilty plea he may be sent to the Crown Court if it is in the interest of justice to do so, although the court should consider the advantages of a separate trial in the Youth Court even in this case. If both plead not guilty and the adult is to be tried in the magistrates court, a joint trial will take place in the magistrates court.</p> <p>If the court is satisfied that the juvenile is likely to receive a custodial sentence for a grave crime pursuant to s 250 of the Sentencing Code significantly in excess of the two-year maximum of a Detention and Training Order he may be sent to the Crown Court whether on a guilty or not guilty plea. The decision is for the court and the juvenile has no right of election. However, the Youth Court can commit for sentence to the Crown Court if it considers that a sentence pursuant to s 250 is appropriate or that there is now evidence to indicate that the defendant is dangerous and liable to be sentenced pursuant to s 255 of the Code. As a result there is strong guidance that the case should be retained and tried in the Youth Court and the defendant committed for sentence with full knowledge of the circumstances where it appears that the powers of the Youth Court are insufficient.</p> <p>Here the more serious offence of wounding with intent would appear to fall within category B3 of the sentencing guidelines unless the knife is regarded as a “highly dangerous” weapon which would take it into category A3, as there is no indication that the wound is particularly grave and Lovell appears to have played something other than a leading role in group activity. The entry point for an adult would be 4 or 5 years custody but this can here be reduced in relation to good character and very substantially because of age to approximately one third. This brings it within the two-year maximum of a Detention and Training Order so sending or committal to the Crown Court appears unlikely.</p>	
Question 1 Total:		28 marks

Question Number	Suggested Points for Responses	Max Marks
2(a)	<p>Handling stolen property is an either way offence.</p> <p>The initial appearance will be in the magistrates court for plea before venue and mode of trial.</p> <p>The charges will be put to Joe Clarke and he will be asked to indicate a plea.</p> <p>On indicating a not guilty plea the court will proceed to mode of trial. Initially, the court must decide whether trial on indictment or summary trial is more suitable.</p>	9

	<p>It will take into account previous convictions disclosed by the prosecution and any representations by prosecution or defence, but must treat the offence as being at least as serious as represented by the prosecution.</p> <p>Generally the primary consideration is whether the magistrates court has sufficient powers of sentencing. It can impose a maximum of six months imprisonment for anyone offence and an aggregate of 12 months imprisonment for two or more either way offences. The court must take into account the official sentencing guidelines.</p> <p>Here the guideline for the more serious offence of handling the rings places the offence in category A2 as these are high-value goods which are the proceeds of a very recent robbery. The entry point is three years custody.</p> <p>It is highly likely that the magistrates will decline jurisdiction and send the case to the Crown Court.</p> <p>In the perhaps unlikely event that the magistrates consider the case to fall within a lower category and accepting jurisdiction Joe Clarke has the option of election of trial at the Crown Court. He would need to consider whether the risk of a greater sentence after conviction in the Crown Court outweighs the anecdotal better chances of acquittal by a jury which may be more receptive to some of the defence arguments. He will also have to consider that a Crown Court trial is likely to attract greater publicity and he may be obliged to contribute towards his legal aid depending on a full means assessment.</p> <p>The hearing will also consider bail, any application to lift reporting restrictions and, if necessary legal aid.</p>	
2(b)	<p>Failure to surrender to custody at the appointed time without reasonable excuse is a criminal offence.</p> <p>Where the accused has a reasonable excuse people still commit the offence if he fails to surrender to custody at the appointed place as soon as is reasonably practicable.</p> <p>Here the explanation given by Joe Clarke would appear to be a reasonable excuse for the period of his inpatient treatment but he must nonetheless surrender to custody as soon as practicable.</p> <p>The offence, if proved, is dealt with as a criminal contempt of court by the judge in the Crown Court.</p> <p>After Joe Clarke surrenders to custody the court must consider whether to remand him in custody pending trial or to re-bail him on the existing or different conditions.</p> <p>If the court is satisfied that the failure to surrender was due to circumstances beyond his control and that he surrendered promptly when able to do so, it is likely to re-bail on the existing conditions, but if there is material to suggest that Joe Clarke has not complied as far as practicable with his obligations, more restrictive conditions of bail to secure a surrender to custody on the next occasion, or even a remand in custody are possible outcomes.</p> <p>The defence will of course make representations with a view to persuading the court to accept that Joe Clarke has done all that was reasonably practicable or alternatively to mitigate the seriousness of his breach of bail.</p>	6

2(c)	<p>There is clearly no likelihood of securing her attendance in person, unless she is willing and able to leave the cruise liner and return to England for the purpose. A witness summons would be ineffective as she is outside the jurisdiction.</p> <p>The court may be prepared to allow her to give evidence remotely by video link if this is practicable.</p> <p>Her evidence could also be admitted as hearsay. Ideally she should produce a formal witness statement, but secondary evidence or a more informal document can in principle be admitted as hearsay.</p> <p>Hearsay can be admitted with the consent of all parties, although in this case it is unlikely that the prosecution would consent.</p> <p>It is also admissible pursuant to s 116 (2) (c) Criminal Justice Act 2003 on the basis that the proposed witness is outside the United Kingdom and it is not reasonably practicable to secure her attendance</p>	7
2(d)	<p>You have an overriding duty to the court not to mislead it or be party to it being misled by another (s 1.4 SRA Code of Conduct) and to conduct proceedings fairly and not to tamper with evidence or pb party to production of false evidence (s 2.1 and 2.2).</p> <p>Dominic Price is clearly not a witness of truth. He would be committing perjury if he gave evidence on behalf of Joe Clarke, and you would be in breach of your duty in allowing him to do so.</p> <p>If Joe Clarke were to insist on using Dominic Price as a witness, you would have to withdraw from the case.</p> <p>If Joe Clarke accepts that he cannot use this evidence you can continue to act for him and your duty of confidentiality him means that you are not required to disclose the situation to any third party. Even if you withdraw from the case you must do so in a way which safeguards client confidentiality.</p>	5
Question 2 Total:		27 marks

Question Number	Suggested Points for Responses	Max Marks
3(a)	<p>Nature of the defence:</p> <ul style="list-style-type: none"> Count One (rings) Alibi Mistaken Identity Count Two (motorbike) Absence of mens rea (dishonesty) <p>The matters of fact on which you take issue with the prosecutor and why.</p> <p>That I was the person who received proceeds of a robbery at Drummond St car park and pawned such proceeds at Cashmachine, Birmingham.</p>	8

	<p>Because this is mistaken identity. I have an alibi for the event at the car park. I spent the whole day, including the relevant time, with a girlfriend.</p> <p>That the cash found in my flat represented the funds received by pawning the rings.</p> <p>Because this money belonged to a friend for whom I was looking after it.</p> <p>Set out particulars of the matters of fact on which you intend to rely for the purposes of your defence;</p> <p>Only the above, and the alibi set out below.</p> <p>Indicate any point of law that you wish to take, including any point about the admissibility of evidence or about abuse of process, and any authority relied on;</p> <p>Whether the VIPER procedure was conducted fairly and lawfully in the absence of any representative of the defendant</p> <p>and</p> <p>Particulars of alibi witness:</p> <p style="padding-left: 40px;">Kate Ehiogu, c/o Jacaranda Princess; DoB 23/06/1998</p>	
<p>3(b)</p>	<p>Generally the prosecution has the legal and evidential burden, to the criminal standard. The jury must be satisfied so that they are sure that all the elements of the offence are complete and that the defendant is guilty.</p> <p>In the circumstances of this case the prosecution must prove that Joe Clarke dishonestly received stolen goods.</p> <p>In relation to the first count relating to the rings, there is no doubt that the rings were stolen and it is an irresistible inference that the person who took possession of them and received them from the thief in the Drummond Street car park did so dishonestly. The issue is whether that person was Joe Clarke.</p> <p>In relation to the second count relating to the motorcycle there is no doubt that Joe Clarke received the item and it was in fact stolen, but the issue is whether the prosecution can prove dishonesty.</p> <p>As Joe Clarke gave a no comment interview without giving a written statement the prosecution may seek to invite the jury to draw adverse inferences from his silence interview pursuant to s 34 Criminal Justice and Public Order Act 1994. This only applies to</p>	<p>14</p>

facts which he could be expected to mention in interview but these would include his alibi, his explanation for the presence of the cash and his explanation for his possession of the motorbike.

In relation to the count relating to the rings the evidence available to the prosecution is

- The identification evidence; as this is disputed the judge will have to give a Turnbull the direction to the jury pointing out that the capacity to effectively identify other human beings is fallible and that an honest and convincing witness may be mistaken. The direction should also comment appropriately on any circumstances relating to the strength or otherwise of the evidence, including the conditions in which the witness observed the alleged offender, including the length of time, lighting and other conditions and any factor which might lead to the witness recalling the incident. If the evidence, having regard to this guidance, can be seen as strong, it can be taken into account in the usual way, but it is weak, the jury should be instructed to look for evidence which can support it. In this case the identification by the police officer following viewing of the CCTV footage essentially stands or falls on its own merits. The identification by the pawnshop manager is supported by the driving licence particulars.
- The evidence of Kevin Jones. He is no longer a co-accused and is a competent and compellable witness for the prosecution. If accepted his evidence is fairly conclusive. The defence will need to seek to undermine this evidence by alleging that he is not a witness of truth as he is motivated by animosity towards Joe Clarke and is wrongly implicating him in order to protect another and/or in order to inflict harm on Joe Clarke as a result of their previous animosity.
- Generally the prosecution has the legal and evidential burden, to the criminal standard. The jury must be satisfied so that they are sure that all the elements of the offence are complete and that the defendant is guilty.
- In the circumstances of this case the prosecution must prove that Joe Clarke dishonestly received stolen goods.
- In relation to the first count relating to the rings, there is no doubt that the rings were stolen and it is an irresistible inference that the person who took possession of them and received them from the thief in the Drummond Street

car park did so dishonestly. The issue is whether that person was Joe Clarke.

- In relation to the second count relating to the motorcycle there is no doubt that Joe Clarke received the item and it was in fact stolen, but the issue is whether the prosecution can prove dishonesty.
- As Joe Clarke gave a no comment interview without giving a written statement the prosecution may seek to invite the jury to draw adverse inferences from his silence interview pursuant to s 34 Criminal Justice and Public Order Act 1994. This only applies to facts which he could be expected to mention in interview but these would include his alibi, his explanation for the presence of the cash and his explanation for his possession of the motorbike.
- In relation to the count relating to the rings the evidence available to the prosecution is
- The identification evidence; as this is disputed the judge will have to give a Turnbull the direction to the jury pointing out that the capacity to effectively identify other human beings is fallible and that an honest and convincing witness may be mistaken. The direction should also comment appropriately on any circumstances relating to the strength or otherwise of the evidence, including the conditions in which the witness observed the alleged offender, including the length of time, lighting and other conditions and any factor which might lead to the witness recalling the incident. If the evidence, having regard to this guidance, can be seen as strong, it can be taken into account in the usual way, but it is weak, the jury should be instructed to look for evidence which can support it.
- In this case the identification by the police officer following viewing of the CCTV footage essentially stands or falls on its own merits. The identification by the pawnshop manager is supported by the driving licence particulars.
- The evidence of Kevin Jones. He is no longer a co-accused and is a competent and compellable witness for the prosecution. If accepted his evidence is fairly conclusive. The defence will need to seek to undermine this evidence by alleging that he is not a witness of truth as he is motivated by animosity towards Joe Clarke and is wrongly implicating him in order to protect another and/or in order to inflict harm on Joe Clarke as a result of their previous animosity.
- In doing so the defence potentially opens up Joe Clarke's previous bad character. In turn, on the assumption that

	<p>Kevin Jones is also a bad character, that can also be put in issue. The prosecution are unlikely to have sought to put the bad character of Joe Clarke in issue is relevant to a matter between defence and prosecution as his previous convictions are not for offences of dishonesty and therefore do not disclose any propensity in that respect.</p> <ul style="list-style-type: none"> • The cash found in the flat. The prosecution will rely upon the coincidence of the amount of cash being the same as that obtained by pawning the rings, and on the name Kevin on the envelope. This is essentially circumstantial evidence, but is likely to carry weight unless effectively rebutted by cogent evidence that the cash did indeed belong to a friend as Joe Clarke has indicated. • Evidence in relation to the count relating to the motorbike • The prosecution may seek to rely on recent possession as discussed in <i>Abramovitch (1914)</i>. • The prosecution may also rely on an adverse inference from the absence of explanation in interview. • Joe Clarke has an alibi which on the face of it covers the period when he is alleged to have been receiving the stolen property in the Drummond Street car park. The evidence of Kate Elias is admissible for this purpose as discussed previously. However, she does not provide an alibi for the entire period, and the prosecution are entitled to cast doubt on whether the period of absence she refers to could include the time of the incident at the car park. • While the defence does not bear the burden of proof, it is likely that the defendant will have to give evidence in order to avoid further adverse inferences from silence at trial, and in order to seek to raise a doubt in the mind of the jury as to matters such as the provenance of the cash found in the flat, the loss of his driving licence and the circumstances in which he came into possession of the motorbike. • No point can be taken on the search – consent is not necessary: s 18 and 32 Police and Criminal Evidence Act 1984. 	
Question 3 Total:		22 marks

Question Number	Suggested Points for Responses	Max Marks
4(a)	Marla Brathwaite will need to make an application for a representation order online to the Legal Aid Agency using CRM14 eForm.	5

	<p>Universal Credit is a passporting benefit so she will automatically satisfy the means test.</p> <p>As the case is proceeding in the magistrates court she will need to satisfy the merits test that is in the interests of justice for legal aid to be granted.</p> <p>As Marla Brathwaite is of previous good character and is applying to join the Royal Navy relevant factors will include loss of reputation and potential loss of employment together with the possibility of a custodial sentence, although this in itself is of relatively little weight.</p> <p>There is a defence (self-defence).</p> <p>Other criteria such as complexity inability to comprehend proceedings and the need for cross-examination of vulnerable witnesses appear less relevant.</p>	
4(b)	<p>The defence bears the evidential burden of making self defence a live issue. In practice this merely means a credible assertion.</p> <p>The burden of proof then shifts to the prosecution to establish to the criminal standard that the defendant was not acting in self defence.</p> <p>A person acts in self defence if he reacts to a situation as he honestly believes it to be and the degree of force used in self defence is reasonable having regard to the circumstances which the defendant honestly believed to exist: <u>Williams (Gladstone) (1987)</u></p>	6
4(c)	<p>The offence appears to fall within category B2 or B3. The culpability certainly appears to be medium as a weapon was used there is no suggestion of premeditation. The materials are not clear as to the extent of the harm but a broken nose is relatively significant particularly in the case of a female for cosmetic reasons.</p> <p>There will be no discount for a guilty plea. The starting point for an offence in category B2 is 36 weeks custody but with a range including a high level community order and for category B3 the starting point is a high level community order but the range includes custody.</p> <p>Mitigation should therefore be directed to persuading the court not to impose a custodial sentence, or to suspend that sentence if the court is persuaded that the custody threshold has been crossed.</p> <p>The presentence report suggests that there is genuine remorse, and this should be stressed. The loss of good character should also be stressed as should the frustration of her career ambition to join the Royal Navy.</p> <p>Given the assessment in the presentence report that she is of low risk of reoffending, it can be argued that a custodial sentence will not assisted her rehabilitation. A community order can include targeted interventions to address anger management issues.</p> <p>Furthermore, Marla Brathwaite is currently caring to a substantial extent for her mother and a disposal which prevents her from doing so</p>	7

	will damage the mother's interests. A community order and/or suspended sentence will allow her to continue with this useful activity.	
4(d)	<p>There are two modes of appeal from the magistrates court. The court can be asked to state a case for the opinion of the Administrative Court: s 111 Magistrates Court Act 1980. This is only appropriate where it is considered that the court has fallen into an error of law or procedure.</p> <p>While the wording of the reasons may suggest that this is the case, the formulation of the case may make it clear that this is merely a verbal confusion and not a legal one. This mode of appeal is unlikely to be fruitful.</p> <p>A defendant can appeal to the Crown Court within 21 days of conviction against conviction or sentence. No grounds of appeal need to be stated. An appeal will result in a full rehearing of the case before a Crown Court comprising a circuit judge or recorder and lay justices but no jury.</p> <p>If the conviction is upheld on appeal the Crown Court can impose any sentence which was open to the magistrates court.</p> <p>In this case this may result in Marla Brathwaite losing the benefit of the apparently lenient sentence imposed by the magistrates</p>	5
Question 4 Total:		23 marks