

## CHIEF EXAMINER COMMENTS WITH SUGGESTED POINTS FOR RESPONSES

JUNE 2021  
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 June 2021 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

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.

The majority of candidates have clearly prepared for the assessment and as such have taken on board the 'clues' which can be found in the Case Study materials. 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 (and particularly where it related to an area of practice at the tribunal), candidates did not do as well. With practice papers it is important to ensure that you have a good knowledge of the whole of the specification, not just what can be discerned from the pre-seen materials.

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 dismissal procedures on a question concerning constructive dismissal. 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, which was clearly not an option if regard was had to the scenario.

### (b)

Again 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.13.

(c) All candidates correctly identified ET1.

### (d)(i)

A difficult question and few candidates gained all 3 marks available. This clearly illustrated that a substantial number of candidates focus solely 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.

(d)(ii) As this was linked to d(i), there is little surprise that this was not answered well.

### Question 2(a)

A very straightforward question where all candidates gained at least 1 mark. Candidates who did not get the full 2 marks, wrote the disciplinary and grievance procedure, considering these to be separate policies, which clearly they are not.

### (b)(i)

Candidates were very clear on this area, understanding the redundancy requirements under s.139. Those who did not go on to explain what each of the three situations entailed, did not gain full marks (but even if they did not, they gained 4/6).

(b)(ii) The vast majority of candidates recognised the correct head for the redundancy situation.

### (c)

Most candidates gained at least two marks out of the three. Marks were not given where the statement was too vague e.g. how good they were at their job (needed to link to performance matrix or an appraisal).

(d) It was a very simple calculation which did not trouble most candidates. It was clearly signposted in the pre-seen materials that this question was likely to be asked.

**2(e)(i)** All but one candidate recognised it was a mobility clause.

**(ii)** A very small number of candidates dropped a mark by not considering the reasonableness of the actual clause.

**Question 3(a)**

Candidates did well on this question. Where marks were lost, it was due to not applying the law to the scenario e.g. mentioning defamation, but not linking it to the scenario.

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

**(ii)**

This question was poorly done by candidates. This shows again an over-reliance on the 'normal' procedure for dismissals. Despite understanding that it was a constructive dismissal situation in the previous question, the candidates considered the procedure for dismissal – something which obviously cannot be the case if the employee resigns.

**(c)** No real issues with this question, candidates were able to identify the law, but did not always gain full marks, as they did not apply the law to the scenario.

**Question 4(a)**

No issues identified for this question, candidates had a good understanding of the law and were able to write about adoption leave.

**(b)** Again candidates were able to write at length about wrongful dismissal. Where marks were dropped, it was because they did not apply it to the scenario.

**(c)** Candidates were obviously happy with this question as it was clearly signposted in the pre-seen materials.

**SUGGESTED POINTS FOR RESPONSES**  
**LEVEL 3 – UNIT 13 – THE PRACTICE OF EMPLOYMENT LAW**

The purpose of this document is to provide candidates and learning centre tutors with guidance as to the key points candidates should have included in their answers to the June 2021 examinations. The Suggested Points for Responses do not for all questions set out all the points which candidates may have included in their responses to the questions. Candidates will have received credit, where applicable, for other points not addressed. Candidates and learning centre tutors should review this document in conjunction with the question papers and the Chief Examiners' reports which provide feedback on candidate's performance in the examination.

Question Number	Suggested points for responses	Max Marks
Q1(a)	Funding Options: <ul style="list-style-type: none"> <li>• Via a 'no win, no fee' arrangement.</li> <li>• Either be a Conditional Fee Agreement or a Damages Based Agreement.</li> <li>• Both of these are contingency fee-based arrangements.</li> <li>• May have Legal Expenses Insurance</li> <li>• Included under home contents, motor or bank account insurance.</li> <li>• May be eligible to obtain Legal Help</li> <li>• And Legal Aid.</li> <li>• Member of Trade Union</li> </ul>	5
Q1(b)	<ul style="list-style-type: none"> <li>• Potentially sex discrimination</li> <li>• A protected characteristic under s.4 Equality Act 2010.</li> <li>• S.11 Equality Act 2010 – Sex Discrimination</li> <li>• Direct discrimination under s.13 Equality Act 2010</li> <li>• A person (A) discriminates against another (B) if, because of a protected characteristic,</li> <li>• A treats B less favourably than A treats or would treat others.</li> </ul>	6
Q1(c)	<ul style="list-style-type: none"> <li>• ET1</li> </ul>	1
Q1(d)(i)	Orders: <ul style="list-style-type: none"> <li>• Can make an order that the hearing is conducted in private.</li> <li>• That the witnesses and other parties are not disclosed.</li> <li>• Or an order for measures preventing witness identification.</li> </ul>	3
Q1(d)(ii)	<ul style="list-style-type: none"> <li>• The starting point is that cases should be heard in public and can be freely reported</li> <li>• There appears to be no particular reason for any order to be made here.</li> </ul>	2
<b>Question 1 Total</b>		<b>17 Marks</b>

Question Number	Suggested points for responses	Max Marks
Q2(a)	<ul style="list-style-type: none"> <li>• Discipline, Dismissal and Grievance;</li> <li>• Internet and communications use;</li> <li>• Equal opportunities;</li> <li>• Whistle blowing;</li> <li>• Health and Safety.</li> <li>• Credit any other sensible answer</li> </ul>	2
Q2(b)(i)	<ul style="list-style-type: none"> <li>• s.139 Employment Rights Act 1996 (ERA 1996)</li> <li>• Business closure,</li> <li>• Where the employer has ceased or intends to cease to carry on the business with which the employee was employed.</li> <li>• Workplace closure,</li> <li>• Where the employer has ceased or intends to cease to carry on that business in the place where the employee was employed.</li> <li>• There is a reduced requirement for employees,</li> <li>• Where the requirements of the business for the employee to carry out work of a particular kind have ceased or diminished.</li> </ul>	6
Q2(b)(ii)	<ul style="list-style-type: none"> <li>• Reduced requirement for employees</li> </ul>	1
Q2(c)	<ul style="list-style-type: none"> <li>• Qualifications,</li> <li>• Skills</li> <li>• Disciplinary record</li> <li>• Absence Record (note limitations, short term v long term)</li> <li>• Time Keeping</li> <li>• Credit any other sensible answer</li> </ul>	3
Q2(d)	<ul style="list-style-type: none"> <li>• The Basic Award for redundancy is calculated based on age</li> <li>• For redundancy each complete years' work carried out over the age of 40</li> <li>• Is paid at one and a half week's pay per complete year</li> <li>• Delia is 47, worked for 4 years, pay is £420 per week (well below statutory cap).</li> <li>• <math>4 \times 1.5 \times £420 = £2,520</math></li> </ul>	5
Q2(e)(i)	<ul style="list-style-type: none"> <li>• Mobility Clause</li> </ul>	1
Q2(e)(ii)	<ul style="list-style-type: none"> <li>• Must be enforced reasonably.</li> <li>• In the present case unlikely to be enforceable</li> <li>• 60 miles is not a reasonable distance to expect someone to travel to work.</li> </ul>	2
<b>Question 2 Total</b>		<b>20 Marks</b>

Question Number	Suggested points for responses	Max Marks
Q3(a)	<ul style="list-style-type: none"> <li>• Where a reference is provided the employer must take reasonable care</li> <li>• to ensure that the information in the reference is true, accurate and fair,</li> <li>• And does not give a misleading impression.</li> <li>• Jemimah French's job title does not infer that she is a 'junior member of the team'.</li> <li>• Should consider the possibility of a claim by Jemimah French for defamation,</li> <li>• In respect of the issue of her being an addict and also a criminal.</li> <li>• Breach of contract in respect of the duty of good faith.</li> <li>• In respect of her being suspected of theft, the employer should not write this unless there has been an investigation and reasons are given,</li> <li>• Which there is no indication this has taken place.</li> <li>• Negligent Misstatement</li> </ul>	5
Q3(b)(i)	<ul style="list-style-type: none"> <li>• Is an employee</li> <li>• Not in excluded category of employment</li> <li>• Must have 2 years continuous employment</li> <li>• Has 3 years continuous employment</li> <li>• She has been dismissed by the employer</li> <li>• Constructive dismissal</li> <li>• Is eligible to make a claim</li> </ul>	6
Q3(b)(ii)	<ul style="list-style-type: none"> <li>• Constructive dismissal</li> <li>• Forced to resign because of employer's conduct.</li> <li>• In this case the provision of the unfair and untrue reference to a third party.</li> <li>• Breach of implied term of trust and confidence.</li> <li>• Likely to be enough on which to claim unfair dismissal.</li> </ul>	5
Q3(c)	<ul style="list-style-type: none"> <li>• The employer must have a legitimate business interest to protect</li> <li>• And it must be reasonable in terms of duration, geography and content.</li> <li>• She is losing staff to competitors, so she has a legitimate business interest to protect.</li> <li>• Although prima facie, six months and 25 miles may be considered reasonable,</li> <li>• It is unlikely to be so for all employees.</li> </ul>	4
<b>Question 3 Total</b>		<b>20 Marks</b>

Question Number	Suggested points for responses	Max Marks
Q4(a)	<ul style="list-style-type: none"> <li>• Sections 75A and 75B Employment Rights Act 1996, or Leave Regulations</li> <li>• Provide that an employee who is the adoptive parent of a child placed for adoption</li> <li>• Is entitled to 52 weeks adoption leave.</li> <li>• This consists of 26 weeks Ordinary Adoption Leave (OAL)</li> <li>• And 26 weeks Additional Adoption Leave (AAL).</li> <li>• Horrace Jones will be entitled to this and will not be required to use holiday instead.</li> </ul>	4
Q4(b)	<ul style="list-style-type: none"> <li>• Wrongful dismissal</li> <li>• Entitled to her salary for the notice period,</li> <li>• Longer of contractual or statutory.</li> <li>• Pension contributions for the period.</li> <li>• Contractually entitled to use company car,</li> <li>• Therefore payment for this as well.</li> </ul>	4
Q4(c)	<ul style="list-style-type: none"> <li>• Regulation 4 Working Time Regulations 1998</li> <li>• An employee's working time shall not exceed an average of 48 hours for each seven days.</li> <li>• Ai Zhang has worked 65 hours throughout the 17-week reference period</li> <li>• There is potentially a breach.</li> <li>• She will be required to work the 65 hours if she has signed an 'opt out'</li> <li>• She can change her mind with notice and rescind the opt-out.</li> <li>• Otherwise she can insist on 48 hours.</li> </ul>	5
	<b>Question 4 Total</b>	<b>13 Marks</b>