

## CHIEF EXAMINER COMMENTS WITH SUGGESTED POINTS FOR RESPONSES

JUNE 2021  
LEVEL 3– UNIT 9 – CIVIL 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 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

Overall, the results for this paper were similar to those attained in the January 2021 examination. There are still a substantial number of candidates who do not understand the basics of civil litigation and have not considered previous examiner reports and exam papers. Those who do not understand the process of civil litigation struggle throughout the paper, not just in respect of individual questions which may be more difficult.

The Case Study materials are sent out six weeks in advance of the examination and candidates need to consider the areas which are likely to be examined. Even though the Case Study is obviously the starting point to discern what types of question will come up in the examination, not all questions can be discerned from it.

It is apparent in respect of some of the answers provided that candidates have a prepared answer to a question they expect to come up in the examination. Obviously this will work for some questions, but a failure to take into account the individual facts of the scenario will ultimately mean that the candidate misses out on important marks.

Exam questions need to be read carefully to ensure that marks are maximised. Candidates need to understand what is required of them. Where candidates failed to maximise marks, it was mainly because they did not understand the

procedure, rather than what the question was asking. A substantial minority of candidates were unable to develop their answers any further than a brief statement or sometimes a single sentence on the subject. The number of marks awarded for each question, gives a good indication as to the level of depth required.

## CANDIDATE PERFORMANCE FOR EACH QUESTION

### **Question 1(a)**

Most candidates did well on this question. It has been asked a number of times and consequently candidates knew what to expect. Where candidates did not do so well, it was because they only mentioned a couple of factors, rather than all those that applied.

### **(b)**

Candidates either did well on this question or they did very poorly. This is due to not understanding which protocol applies in which circumstances (a number of candidates carried on from question (a), which meant they gained no marks).

### **(c)**

A fairly straightforward question, however a proportion of candidates listed some of the factors, but did not apply them to the scenario. This meant that they gained half marks. It should be noted that in total there were 12 potential marks for this question).

### **(d)**

A question which is asked on most civil litigation papers. Virtually all candidates were able to gain full marks here. Those who did not, clearly had little understanding of civil procedure.

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

Most of the Defences drafted were of a reasonable standard and gained reasonable marks. Two points about this, firstly if the correct language was not used by the candidate, the mark was restricted to 4/6. Secondly, where the candidate did not put the information in the required format they received no marks. This is a drafting question and requires the candidate to actually draft the document, if they do not draft it, they should get any marks.

### **(b)**

Candidates do not always read the question carefully. Here a large number of candidates wrote about the procedure for making an application for summary judgment. This did not attract any marks – the question is clear, it requires the potential outcomes.

## **2(c)**

A standard question on costs, which provided the candidate understood related to the Multi Track, provided the opportunity to gain good marks. Some candidates confused this with summary assessment and so received no marks.

## **Question 3(a)**

This question caused a great deal of difficulty for some candidates. Although the question is clear on what is required to be done by the candidate, because it was not signposted in the pre-seen materials, candidates struggled. Suggest that in some quarters too much reliance is being made by providers on the pre-seen materials.

### **(b)**

Candidates generally did okay on this question, although note, even though in all past reports candidates have been told that they need to get both parties/witnesses and experts/legal representatives, to get a mark for each, they are still just writing parties or experts.

### **(c)(i)**

Mixed response to this question on a Charging Order. Some candidates were extremely knowledgeable and easily gained their two marks, others had no idea.

### **(ii)**

Mixed response to this question on a Writ of Control. Some candidates were extremely knowledgeable and easily gained their two marks, others had no idea.

### **(iii)**

Mixed response to this question on a Third Party Order. Some candidates were extremely knowledgeable and easily gained their two marks, others had no idea.

## **Question 4(a)**

A funding question on which most candidates were able to gain full marks. Areas of concern related to the failure to consider the scenario and just write a list relating to funding.

**(b)** The overwhelming majority of candidates attained full marks. Where candidates did not it was due to them confusing civil law with criminal.

**(c)** Good consideration here with virtually all candidates gaining at least 3/4 marks.

**(d)** It is vitally important that candidates understand when documentation is sent to court and when it is not. Where candidates stated that the Part 18 Request was sent to court, not the other side, they received no marks.

**(e)** Some candidates have no idea about how QOWCS operates and consequently did not score as well on this question as well as they could have done. This is an issue for providers.

**SUGGESTED POINTS FOR RESPONSES  
LEVEL 3 – UNIT 9 – CIVIL LITIGATION**

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.

<b>Question Number</b>	<b>Suggested points for responses</b>	<b>Max Marks</b>
Q1(a)	<p>Factors of whether the protocol can be used:</p> <ul style="list-style-type: none"> <li>• Injury sustained is of the type covered by the protocol.</li> <li>• It is a public liability matter.</li> <li>• Protocol only covers situations where the claim falls within the Fast Track</li> <li>• Damages sought are below £25,000.</li> <li>• Liability cannot be disputed,</li> <li>• In the present case it is disputed so cannot use.</li> </ul>	4
Q1(b)	<p>Should use the Pre-action Protocol for Personal Injury:</p> <ul style="list-style-type: none"> <li>• Letter of Claim to the Defendant and they will have 21 days to reply with insurance details</li> <li>• Three month investigation period</li> <li>• At the conclusion of the three months the Defendant will reply stating whether liability is denied, giving reasons for the denial</li> <li>• Will include providing documentation which is material to the issues</li> <li>• In this case the Defendant is likely to raise the issue of contributory negligence</li> <li>• Claimant will send Defendant a schedule of special damages and supporting docs</li> </ul>	5

	<ul style="list-style-type: none"> <li>• The Rehabilitation requirements of the Claimant should be considered</li> <li>• A joint medical expert should be agreed if possible</li> <li>• Throughout the period the parties should be involved in ADR</li> </ul>	
Q1(c)	<p>Allocation of Case:</p> <ul style="list-style-type: none"> <li>• Points contained in Part 26.8 CPR.</li> <li>• Financial value of the claim, as there are limits imposed for each track</li> <li>• Here the claim is for £22,000 so would indicate fast track.</li> <li>• Court will also consider the nature of the remedy sought</li> <li>• Here damages.</li> <li>• The likely complexity of the case</li> <li>• Here fairly straightforward case.</li> <li>• The number of parties involved</li> <li>• Here only two</li> <li>• The amount of any oral evidence that will be required</li> <li>• Here will be limited due to the number of potential witnesses.</li> <li>• The views and circumstances of the parties will also be taken into account.</li> </ul>	7
Q1(d)	<p>Three relevant directions, must include Standard Directions:</p> <ul style="list-style-type: none"> <li>• Standard Directions will be adopted.</li> </ul> <p>The directions will deal with:</p> <ul style="list-style-type: none"> <li>• disclosure and inspection,</li> <li>• the use of experts,</li> <li>• the exchange of witness statements,</li> <li>• preparation for the trial, including Pre-Trial Checklist and setting down for trial.</li> <li>• Stay of proceedings to allow parties to negotiate a potential settlement.</li> </ul>	4
<b>Question 1 Total: 20 marks</b>		

Question Number	Suggested points for responses	Max Marks
Q2(a)	<p>Draft Defence:</p> <ul style="list-style-type: none"> <li>• 1.The Defendant admits that they contracted with the Claimant for the delivery of children’s clothing on the 28th January 2021.</li> <li>• 2. The Defendant denies that the contract was for the sum of £32,500, but was in fact for the sum of £30,500.</li> <li>• 3. The Defendant denies that the said clothing was delivered on the 8th February 2021, but was in fact delivered on the 11th February 2021.</li> <li>• 4. The Defendant admits that it rejected the goods on the 11th February 2021.</li> <li>• 5. The Defendant denies that the Goods were of satisfactory quality and that in the circumstances it was reasonable to reject delivery.</li> <li>• 6. By reason of the matters aforesaid the Claimant is not entitled to the sum claimed.</li> </ul>	6
Q2(b)	<p>Outcomes for Summary Judgment:</p> <ul style="list-style-type: none"> <li>• If the Court finds wholly in favour of the Applicant then the Claim will be struck out.</li> <li>• The Court may dismiss the application and the matter will proceed to trial.</li> <li>• In such circumstances the applicant is likely to be ordered to pay costs to the respondent together with having to bear their own costs, up to that point.</li> <li>• The Court may provide directions for a continuance</li> <li>• Or they may make a Conditional Order.</li> </ul>	5
Q2(c)	<p>Costs in the Multi Track</p> <ul style="list-style-type: none"> <li>• Costs should be agreed if possible</li> <li>• Budgets must be exchanged and filed by all parties with directions questionnaires.</li> <li>• Agreed budget discussion report must be filed no later than 7 days before the CMC.</li> <li>• Budget will detail costs already incurred and estimate future costs by stage and type of work</li> <li>• Reasonable and proportionate budgets should be agreed by the parties</li> <li>• Court can make a costs management order, so the court controls recoverable costs</li> </ul>	5
<b>Question 2 Total: 16 marks</b>		

Question Number	Suggested points for responses	Max Marks
Q3(a)	Provide list of documents <ul style="list-style-type: none"> <li>• Defendant's solicitors are under a duty to disclose documents as an order for standard disclosure has been made.</li> <li>• The duty exists, even if the documents are no longer in the possession of the defendant.</li> <li>• The order for standard disclosure requires a party to disclose documents upon which he or she relies,</li> <li>• those documents which adversely affect his or her case,</li> <li>• adversely affect another party's case or support another party's case,</li> <li>• and those documents required by a relevant practice direction.</li> <li>• The missing documents are stated as having existed but it is no longer in the defendant's control,</li> <li>• as well as indicating what has happened to the document.</li> </ul>	5
Q3(b)	Pre-trial Checklist <ul style="list-style-type: none"> <li>• Ensuring that all directions have been complied with,</li> <li>• Checking the availability of parties and witnesses,</li> <li>• Information concerning experts and legal representation.</li> <li>• The trial itself is also considered, with a trial date being set</li> <li>• and the documents and fee checklist completed.</li> </ul>	4
Q3(c)(i)	Max 2 marks, one of which must be the name of the order: <ul style="list-style-type: none"> <li>• A Charging Order.</li> <li>• Applications are processed at County Court Money Claims Centre and are paper based for the most part.</li> <li>• A court officer will may make an interim order.</li> <li>• Once an interim order is made the parties have 28 days between service and referral to a judge to object to the making of the final charging order.</li> <li>• Subsequently, the Judgment Creditor can apply for an Order for Sale of the property.</li> </ul>	2
Q3(c)(ii)	Max 2 marks, one of which must be the name of the order: <ul style="list-style-type: none"> <li>• Writ of Control.</li> <li>• The Writ will command a High Court Enforcement Officer (HCEO)</li> <li>• to take control of the items and sell them at auction.</li> <li>• The proceeds from the auction are used to satisfy the money judgment.</li> </ul>	2
Q3(c)(iii)	Max 2 marks, one of which must be the name of the order:	2

	<ul style="list-style-type: none"> <li>• Third Party Order.</li> <li>• An Interim Third Party Order will be served on the bank without notice to the Judgment Debtor.</li> <li>• The Order will be made Final</li> <li>• and the Third Party will be required to transfer the funds from the deposit account of the Judgment Debtor.</li> </ul>	
<b>Question 3 Total: 15 marks</b>		

Question Number	Suggested points for responses	Max Marks
Q4(a)	2 marks for each type of funding and any two of the following: <ul style="list-style-type: none"> <li>• <b>Could pay privately on a retainer basis.</b></li> <li>• Qualified one-way costs shifting will alleviate the issue of having to pay the Defendants costs should the claim fail.</li> <li>• <b>A Conditional Fee Arrangement (CFA),</b></li> <li>• Success fee if she was successful in the claim.</li> <li>• <b>A Damages Based Agreement (DBA),</b></li> <li>• which is a privately funded arrangement between a representative and a client where the representative's agreed fee is 'contingent' upon the case being successful,</li> <li>• <b>She may have some form of Before the Event insurance,</b></li> <li>• In this case house insurance</li> </ul>	4
Q4(b)	<ul style="list-style-type: none"> <li>• The standard of proof - 'the balance of probabilities',</li> <li>• The Claimant must satisfy the burden of evidence (Zofia Kowalski).</li> </ul>	2
Q4(c)	Documents will need to be sent to court to begin a PI claim N1 Claim Form <ul style="list-style-type: none"> <li>• Particulars of Claim</li> <li>• Medical Report</li> <li>• Schedule of Loss</li> <li>• Fee</li> </ul>	4
Q4(d)	<ul style="list-style-type: none"> <li>• Part 18 Request for Further Information</li> <li>• Preliminary request in the form of a letter being sent to the other party.</li> <li>• The receiving party should then reply answering the points raised.</li> <li>• In both cases the letter should identify itself a Part 18 Request or Reply.</li> <li>• The Reply should only deal with matters raised in the Request</li> <li>• and it may take the form of an answer or an objection.</li> <li>• If no reply can apply to court</li> </ul>	5
Q4(e)	<ul style="list-style-type: none"> <li>• Costs are always at the discretion of the Court</li> </ul>	4

	<ul style="list-style-type: none"><li>• In most cases costs will follow the event,</li><li>• However qualified one-way costs shifting will apply</li><li>• Losing claimant will not have to pay Defendants costs,</li><li>• As there is no evidence that claimant was fundamentally dishonest.</li><li>• Claimant may still have to pay own costs.</li></ul>	
<b>Question 4 Total: 19 marks</b>		