

Examination Report

Exam Session:	June 2021
Exam Paper:	Unit 3

The purpose of the report is to provide feedback to tutors and candidates on the candidates' performance in the examination with recommendations about how any issues identified may be addressed. This is intended to be a useful document that comments on overall performance by candidates in the June 2021 Unit 3 examination, advises on how performance might be improved and indicates what should be contained in successful answers to the questions in the examination paper.

This report should be read in conjunction with the relevant examination paper and marker guidance.

1. Summary of Candidate Performance

Overall performance was very good, there was mixed performance on some questions on the paper and some candidate's performance varied considerably suggesting that they had not prepared well for some questions, but pass rates were pleasing. 80% of candidates passed and 20% of candidates failed.

The majority of candidates demonstrated they had good general academic skills. Generally, candidates were able to focus on the question set and ensure they had not only met the knowledge outcomes but also those requiring application and analysis. For the higher marks students needed to ensure that the answer were applied to the actual exam question. This was really pleasing to see. It is clear that this increased focus on answering the actual question asked played an important role in the pass rate. A majority of students were able to include authority and case law in support on points made. This ensured stronger marks were awarded.

That being said, there were a couple of disappointing aspects to the answers that candidates gave. Firstly, candidates seemed ill prepared to answer a question on risk management. Candidates had not familiarised themselves with the new SRA Code of Conduct. As the new Code of Conduct has been in place since November 2019 all

candidates should be aware of it and have been aware that they were expected to demonstrate knowledge of it in the assessment. Given the importance of risk management students should have been able to deal with such a question.

Secondly, 40% of candidates did not approach question 6, the recoverability of ATE premiums in clinical negligence cases, very well. This is very disappointing given the main focus of this question was the test of proportionality. This is a very important test to Costs Lawyers and it's disappointing that candidates had not prepared very well on the principle.

There was a total of 5 candidates that sat this paper. The breakdown of the numbers of fails, passes, merits and distinctions is provided in the statistics below, along with a question by question breakdown of the whole paper.

For the purposes of moderation, a sample of papers were selected, representing 60% of the total number of candidates which is above ACLT Guidelines. This meant that a broad range of papers was considered, the papers considered included a fail, a borderline pass and a distinction level paper. Only one marker marked the scripts and this ensured consistency in marking.

The table below sets out the data on the paper.

Number of Candidates	5
Total Fails	1
Total Pass	4
% Pass	80
% Fail	20
Classification of Marks Achieved	
% Total in Pass Band	1
% Total in Merit Band	2
% Total in Distinction Band	1

Within the examination the question paper assessed 100% of the learning outcomes that had not been assessed within assignments on the relevant modules. It appeared to the examination team that all candidates had sufficient time to complete the exam. The length and quality of responses did, however, vary significantly. A majority of students were able to answer all questions fully and only a small number of students left partly answered questions. Problem questions, found in section B of the paper, provide an opportunity for candidates to demonstrate that they can use the law to solve problems. The weaker performing candidates who failed to answer the questions or relate the law to the facts of the scenario tended to perform better in section A of

the paper than they did in section B. Some students found it harder to apply the knowledge to a scenario and provide advice with supporting case law.

The first four questions on the paper were compulsory for all candidates and carried the lowest marks per question. On the whole, the performance on these questions was good. Two of the four questions saw a pass rate below 100%. Question 3 appeared to cause the most problems for candidates, this had one of the lowest pass rate in section A and the lowest average mark at 50% (borderline pass). The marks for these questions pre-moderation were fair and in accordance with the marker guidance. Candidates performed best in the section A question on organisational structures and the risks associated with performance management (i.e questions 1 and 4). This mirrors the performance on the September 2020 sitting.

For the remaining three questions on the paper, candidates were required to select these from five optional questions. All candidates answered question 6 which assisted with both marking and moderation in terms of ensuring consistency in marks awarded.

2. Candidate Performance for Each Question

Q1 – Business Models

This was a compulsory question on the paper, found within section A, the question attracted up to 10 marks. Candidates were required to describe the organisational models that start-up costs firms should consider to ensure their structures allow for flexibility whilst maintaining professionalism.

Number of Candidates	5
Total Fails	0
Total Pass	5
% Pass	100
% Fail	0

This question was well answered with all candidates achieving a pass. The average mark on this question was 70% (distinction level). It is clear that candidates had prepared well for the question.

Q2 – Functional Areas of Business Management

This was a compulsory question in section A of the paper, the question attracted up to 10 marks. Candidates were required to identify and describe the rules that require authorised bodies to have an individual

who is designated as its Compliance Officer for Legal Practice and an individual who is designated as its Compliance Officer for Finance and Administration.

The table below sets out the data on this question.

Number of Candidates	5
Total Fails	2
Total Pass	3
% Pass	60
% Fail	40

This question was answered by 100% of candidates and the pass rate (at 60%) was poorer than expected. It was clear that some candidates had not really prepared well for this question despite similar questions appearing on past papers. The question asked candidates to explore the roles of compliance offices, advising compliance officers is an expected area for growth of work for costs professionals so it's disappointing that some candidates lacked the requisite knowledge to achieve a pass on this question. The question was deemed fair by the assessment team.

Q3 – Impact of External Elements of the Business Environment on the Business

This was also a compulsory question in section A of the paper and the question attracted up to 10 marks. Candidates were required to outline the rules that require SRA regulated firms to identify, manage and monitor risks to their business.

The table below sets out the data on this question.

Number of Candidates	5
Total Fails	2
Total Pass	3
% Pass	60
% Fail	40

This question was answered by 100% of candidates and the pass rate (at 60%) and poorer than expected. The candidates that performed well were able to provide good explanations of the SRA requirements (or lack of explicit reference) and how a risk management policy could be implemented. The candidates that failed to meet the required standard made very little reference to the rules apart from providing short commentaries on rule 2. Marks ranged from 30% to 70% (fail to distinction). The question was deemed fair by the assessment team.

Q4 – Performance Management

This was a compulsory question in section A of the paper, the question attracted up to 10 marks. Candidates were required to outline the potential pitfalls and risks that a costs firm may face when they implement performance management strategies.

Number of Candidates	5
Total Fails	0
Total Pass	5
% Pass	100
% Fail	0

The pass rate on this question (at 100%) was excellent. The candidates that performed better were able to outline the potential claims of unfair dismissal, discrimination and breach of contract. This question was deemed fair by the assessment team.

Q5 – Case and Costs Management

This was an optional question in section B of the paper, like all other questions in this section, the question attracted up to 20 marks. Candidates were required to write the body of an email setting out the steps that should be taken in the scenario, particularly providing advice on whether an application should be made to amend a budget or if it should be left to assessment. The table below sets out the data on this question.

Number of Candidates	4
Total Fails	0
Total Pass	4
% Pass	100
% Fail	0

80% of candidates answered this question and there was a 100% pass rate. The range of marks was 63% (merit) - 75% (distinction). This is an important area of work for candidates, many of whom will be advising on this area in their current roles and all are likely to have to provide advice on this type of matters during the lifespan of their career in costs. It was therefore pleasing to see that such a high proportion opted to answer this question. The candidates that performed the best referred to the relevant authority and were also able to offer some logical sound advice based on the information they had been given. Weaker responses did not manage to set out the framework of the CPR and/or were not able to use case authority to explain the likely consequences

based on the facts of the scenario. The question was deemed fair by the assessment team.

Q6 – Civil Procedures – Clinical and Professional Negligence

This was an optional question in section B of the paper and attracted up to 20 marks. Candidates were required to write the body of an email advising on the recoverability of the ATE premium in the scenario and advising on why there should be a review of the provisional assessment. All candidates opted to answer this question making it the most popular questions in Section B of the paper.

The table below sets out the data on this question.

Number of Candidates	5
Total Fails	2
Total Pass	3
% Pass	60
% Fail	40

Candidates were presented with the outcome of a provisional assessment in which an ATE premium had been reduced because a comparable premium approach had been adopted in satisfaction of achieving the overriding objective and proportionality. All candidates attempted the question but the pass rate was lower than expected (60%). Marks ranged from 40% (fail) to 73% (distinction). This question required knowledge of the pre and post LASPO provisions and the test of proportionality, these are important fundamental principles in the day to day work undertaken by costs professionals.

This question was deemed fair by the assessment team.

Q7 – Civil Procedure – Land and Family

This was an optional question in section B of the paper, again, this question attracted up to 20 marks. Candidates were required to write the body of an email setting out how costs in family cases are usually dealt with, how the costs in the scenario should be dealt with and what rules the Court should consider when making a Costs Order.

The table below sets out the data on this question.

Number of Candidates	4
Total Fails	1
Total Pass	3
% Pass	75

% Fail	25
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This question was attempted by 80% of candidates with a pleasing pass rate of 75%. Marks ranged from 75% (distinction) to 10% (fail). The candidates were expected to identify that the scenario involved financial proceedings and should have explained the FPR definition of conduct and what that meant when applied to the facts of the scenario. The question was deemed fair by the assessment team.

Q8 – Civil Procedure – contentious probate and judicial review

This was an optional question in section B of the paper, like all other questions in this section, the question attracted up to 20 marks. Candidates were required to write the body of a memo setting out the rules on costs in contentious probate matters, with specific consideration of the general rule under the CPR.

The table below sets out the data on this question.

Number of Candidates	0
Total Fails	0
Total Pass	0
% Pass	0
% Fail	0

No candidates answered this question. The question was, however, deemed fair by the assessment team.

Q9 – Injunctions

This was an optional question in section B of the paper and attracted up to 20 marks. Candidates were required to write the body of a memo detailing how the costs of any injunction proceedings would ordinarily be dealt with and whether or not, based on the facts presented, they believe costs should have been reserved in this scenario.

The table below sets out the data on this question.

Number of Candidates	2
Total Fails	0
Total Pass	2
% Pass	100
% Fail	0

Candidates were required to explore the idea that most interim injunction applications are likely to be dealt with in under a day and

therefore the starting point under the CPR would suggest that those costs should be summarily assessed. This question was answered by 40% of candidates and 100% of candidates passed this question. The average mark obtained was 65% (merit). Despite the question being last on the paper it did not appear that candidates ran out of time on this question. This question was deemed fair by the assessment team, despite the poor pass rate.

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