June 2021: Unit 3 Marker Guidance (Pre 2020 Intake)

The marking rubric and guidance is published as an aid to markers, to indicate the requirements of the examination. It shows the basis on which marks are to be awarded by examiners. However, candidates may provide alternative correct answers and there may be unexpected approaches in candidates' scripts. These must be given marks that fairly reflect the relevant knowledge and skills demonstrated.

Mark schemes should be read in conjunction with the published question paper and any other information provided in this guidance about the question.

Before you commence marking each question you must ensure that you are familiar with the following:

- ☑ the requirements of the specification;
- ☑ these instructions;
- ☑ the exam questions (found in the exam paper which will have been provided to you along with this document); and
- ☑ the marking rubric for each of the questions which you have been asked to mark.

The marking rubric for each question identifies indicative content, but it is not exhaustive or prescriptive and it is for the marker to decide within which band a particular answer falls having regard to all of the circumstances including the guidance given to you. It may be possible for candidates to achieve top level marks without citing all the points suggested in the scheme, although the marking rubric will identify any requirements.

It is imperative that you remember at all times that a response which:

- ☑ differs from examples within the practice scripts; or
- ☑ includes valid points not listed within the indicative content; or
- ☑ does not demonstrate the 'characteristics' for a level

may still achieve the same level and mark as a response which does all or some of this. Where you consider this to be the case you should **make a note on the script** and be prepared to discuss the candidate's response with the moderators to ensure consistent application of the mark scheme.

Section A

Candidates must answer **ALL** of the questions in this section.

Question 1:	Describe the organisational models that start-up costs firms should consider to ensure their structures allow for flexibility whilst maintaining professionalism.
Total Marks Attainable Fail = 0-4.9 Pass = 5+ Merit = 6+ Distinction = 7+	10
Indicative Content	**Marks**
Required: Candidates should identify different models for organisation structures, e.g: ***Mintzberg suggests:*** There are seven ways to ideally structure an organisation. In the first five there is a core part of the organisation that exerts key influence over its structure. ***Charles Handy:*** Produced a model of business based on its organisational culture. This provides an insight into how an organisation can be structured and managed as well as an idea of the type of organisation a person might fit in to best. The model relates to four cultures. He described each individual culture, relating it to one of the Greek gods.	Up to 2 marks
Candidates should be credited for a discussion on Mintzberg's model, e.g: ***The Entrepreneurial Organisation:*** Shaped by a strategic apex creating centralisation. It generally has few staff, minimal division of labour, little hierarchy, with power focused strongly with the chief executive and is coordinate through direct supervision. ***The Machine Organisation:*** This is shaped by its technostructure – planner, financial controllers, schedulers etc. It works on the basis of standardised routines and operating tasks. Again, it is highly centralised and controlled, with formal communications, operating units, tasks grouped under functions, elaborate administrative systems. It has centralised decision-making and a clear distinction between management and staff. ***The Diversified Organisation:*** This is a set of semi-autonomous units under a central administrative structure; it is this central *middle line* which shapes the organisation. In effect, it is a multiplicity of machine organisations in the way it functions. Here, though, there are a number of relatively self-sufficient units. The units are usually called divisions with a central	Up to 6 marks To achieve above a pass there must be discussion on how the model may be applied to a start-up costs firm

administration referred to as the headquarters, which allocates capital and tracks performance. ***The Professional Organisation:*** This is driven by its operating core and aims towards professional autonomy. This is built around the skills and knowledge of professional staff who are employed because they know how to do the job and are relied upon to deliver. They therefore have a high degree of autonomy and power sits with the expert. Standards are set outside of the business. This is a highly democratic business and can be difficult to 'manage'. ***The Innovative Organisation:*** The core to this are the support staff and teams. These are often research based organisations which deliver through being flexible in rapidly changing environments, relying on experts, training, letting people get on with their job as they see fit in multi-disciplined teams. Unlike the professional organisation, this expertise is not bound by professional standardised routines and skills. It is an adhocracy rejecting bureaucratic controls and avoiding emphasis on planning and control. Whilst this can cause issues and a rejection of management, it is the way to achieve the innovation and flexibility required. ***The Missionary Organisation:*** At its core, it is the mission, its ideology, that counts above all else. This core is clear, focused, distinctive and inspiring. This is supported through strongly held traditions and values to which staff readily identify and who share common values. There is a strong standardisation of norms and people who join such organisations are recruited to and sign up to these, reinforcing the whole core. This is often considered in the context of religious organisations but can equally be seen in a range of Japanese firms and some American ones such as McDonalds. ***Political:*** This doesn't really have a core, or co-ordinating mechanism, and perhaps should not be included in a list of business models. In a real sense this exists to a degree in all organisations, often characterised by conflict. It is when this becomes more pervasive and extreme that it becomes a problem and the organisation is not able to function due to continuous conflict and a lack of shared objectives or even processes.	
Candidates should be credited for a discussion on Handy's model, e.g: ***Zeus or Power Culture:*** This culture is one of centralised, or top-down, power and influence. This is the spiders web where the leader has connection across the whole organisation. These may be formal and informal lines of authority. This is a leader centric organisation. This means is capable of fast decision making and moving forward. Its downside comes in being dependent on an individual and the quality of their decisions. It can also be detrimental to bringing in other staff to help it	Up to 6 marks To achieve above a pass there must be discussion on how the model may be applied to a start-up costs firm

grow and develop. These can often be new organisations still developing and being led by the individual who established it. ***Apollo or Role Culture:*** Represented by a temple, the pillars being functions and divisions. It has rational people who work according to defined roles and follow rules and procedures. A bureaucracy, it has stability and certainty. However, it can find it hard to adapt and change. Generally large organisations, insurance companies and government administration. ***Athena or Task Culture:*** It is about solving problems through a network of task forces, working parties and various groups. It will define the problem and then allocate the resources to solving it. Its strength is in its flexibility and providing solutions. It struggles when repetition and predictability are needed. Found in research and development departments, consultancies and advertising agencies. ***Dionysius or Person Culture:*** This differs from the others in that the organisation exists to help the individual succeed rather than the other way around. People come together to help them succeed by sharing resources or promote the member of the group. In this, the individual professionals are supreme and management is not highly regarded. This is a model that is becoming more common with outsourced services. These are typified by doctors, lawyers, architects etc.	

Question 2:	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.
Total Marks Attainable Fail = 0-4.9 Pass = 5+ Merit = 6+ Distinction = 7+	10
Indicative Content	**Marks**
Required: Candidates should set out the requirements for SRA firms to have compliance officers, e.g: ***Section 91 and Part 2 of Schedule 11, paragraph 11, of the Legal Services Act 2007:*** Requires ABSs to appoint a Head of Legal Practice (HOLP) but there is no corresponding statutory requirement for solicitor's practices. ***Section 92 and Part 2 of Schedule 11, paragraph 13, of the Legal Services Act 2007:*** Requires ABSs to appoint a Head of Finance and Administration (HOFA) but there is no corresponding statutory requirement for solicitor's practices.	Up to 2 marks To achieve a pass there must be discussion on the legislative framework

Rule 8.1 of the SRA Authorisation of Firms Rules 2019: All SRA regulated firms require a COLP and a COFA which complies with the legislation but is wider in scope.	
Credit a further discussion on the legislative framework on HOLP and HOFAs e.g: ***Section 91(1) of the Legal Services Act 2007:*** The Head of Legal Practice of a licensed body must take all reasonable steps to ensure compliance with the terms of the licensed body's licence, and as soon as reasonably practicable, report to the licensing authority any failure to comply with the terms of the licence. ***Section 91(3) of the Legal Services Act 2007:*** The Head of Legal Practice of a licensed body must take all reasonable steps to ensure that the licensed body, and any of its employees or managers who are authorised persons in relation to an activity which is a reserved legal activity, comply with the duties imposed by section 176, and as soon as reasonably practicable, report to the licensing authority such failures by those persons to comply with those duties as may be specified in licensing rules. ***Section 92(1) of the Legal Services Act 2007:*** The Head of Finance and Administration of a licensed body must take all reasonable steps to ensure compliance with licensing rules made under paragraph 20 of Schedule 11 (accounts). ***Section 92(2) Legal Services Act 2007:*** The Head of Finance and Administration must report any breach of those rules to the licensing authority as soon as reasonably practicable.	Up to 2 marks
Candidates should set out what the responsibility of a COLP is, e.g: ***SRA's guidance Responsibilities of COLPs and COFAs 2019:*** COLP must ensure compliance with the terms and conditions of the firm's authorisation, ensure compliance with the SRA's regulatory arrangements which apply to them (except any obligations imposed under the Accounts Rules), ensure do not breach or contribute to a breach of the regulatory arrangements and ensure that a prompt report is made to the SRA of any serious breach of the terms and conditions of the firm's authorisation, or the regulatory arrangements which apply. ***Paragraph 9.1(a) of the SRA Code of Conduct for Firms 2019:*** COLPs must take all reasonable steps to ensure compliance with the terms and conditions of the firm's authorisation. ***Paragraph 9.1(b) of the SRA Code of Conduct for Firms 2019:*** COLPs must take all reasonable steps to ensure compliance by the firm and its managers, employees or interest	Up to 4 marks To achieve more than a pass there must be discussion on the role of a COLP/COFA in authorized firms which requires candidates to demonstrate an understanding as to what is meant by an authorized firm.

holders with the SRA's regulatory arrangements which apply to them. ***Paragraph 9.1(c) of the SRA Code of Conduct for Firms 2019:*** COLPs must take all reasonable steps to ensure that the firm's managers and interest holders and those they employ or contract with do not cause or substantially contribute to a breach of the SRA's regulatory arrangements. ***Paragraph 9.1(d) and (e) of the SRA Code of Conduct for Firms 2019:*** COLPs must take all reasonable steps to report or draw to the SRA's attention any matters that are believed to amount to a serious breach or they believe should be drawn to the SRA's attention.	
Candidates should set out what the responsibility of a COFA is, e.g: ***SRA's guidance Responsibilities of COLPs and COFAs 2019:*** COFA must ensure compliance with the SRA Account Rules and ensure that a prompt report is made to the SRA of any serious breach of the SRA Account Rules. ***Paragraph 9.2(a) of the SRA Code of Conduct for Firms 2019:*** COFAs must take all reasonable steps to ensure that the firm and its managers and employees comply with any obligations imposed upon them under the SRA Accounts Rules. ***Paragraph 9.2(a) of the SRA Code of Conduct for Firms 2019:*** COFAs must take all reasonable steps to ensure steps to report or draw to the SRA's attention any matters that are believed to amount to a serious breach of the SRA Account Rules or they believe should be drawn to the SRA's attention.	Up to 3 marks To achieve more than a pass there must be discussion on the role of a COLP/COFA in authorized firms which requires candidates to demonstrate an understanding as to what is meant by an authorized firm.
Credit a discussion on the SRA notification requirements and requirement to keep records, e.g: **Schedule 1 of the SRA's Reporting and Notification Guidance 2019:** Sets out 'notifications' which are mandatory to report to the SRA **Examples of mandatory notifications:** Include those found in Rule 7.6 of the SRA Code of Conduct for Solicitors, RELs and RFLs 2019 and Rules 3.6 and 3.8 of the SRA Code of Conduct for Firms 2019. ***Rule 7.6 of the SRA Code of Conduct for Solicitors, RELs and RFLs 2019:*** If a lawyer is charged, convicted or cautioned with a criminal offence, become insolvent or become aware of any change to the information the SRA hold about them. ***Schedule 2 of the SRA's Reporting and Notification Guidance 2019:*** Other matters which involve making a judgement about whether firms are obliged to report to the SRA. ***Paragraph 2.2 of the SRA Code of Conduct for Firms 2019:*** places an obligation on firms to keep and maintain records to	Up to 3 marks

demonstrate compliance with its obligations. The SRA therefore expect compliance officers to keep a record of all breaches that occur. The SRA do not prescribe a method of recording breaches.	

Question 3:	Outline the rules that require SRA regulated firms to identify, manage and monitor risks to their business.
Total Marks Attainable Fail = 0-4.9 Pass = 5+ Merit = 6+ Distinction = 7+	10
Indicative Content	**Marks**
Required (an outline of the SRA standards and regulations) e.g: ***SRA Standards and Regulations:*** Contain a number of codes and rules with provisions relevant to your relationship with the client. ***SRA Code of Conduct for Solicitors, RELs and RFLs:*** Solicitors should only act for clients on instructions from the client, or from someone properly authorised to provide instructions on their behalf. The service provided should be competent and delivered in a timely manner. ***SRA Code of Conduct for Firms:*** Firms must have effective governance structures, arrangements, systems and controls in place to ensure that the firm and its managers and employees comply with all the SRA's regulatory arrangements, as well as with other regulatory and legislative requirements. ***SRA Transparency Rules:*** These rules require firms authorised by the SRA to provide certain information about the cost of various legal services offered by a firm, details of the firm's complaints handling procedure, and key regulatory information. ***SRA Accounts Rules:*** Set out the SRA requirements for when firms and sole practitioners authorised by the SRA receive or deal with money belonging to clients, including trust money or money held on behalf of third parties. The rules apply to authorised bodies, their managers and employees.	Up to 3 marks Candidates should set out clearly the relevant rules that govern the management of SRA regulated firms.
Any relevant point on the framework regulating firms (credit any point raised and applied) e.g: ***Rule 2 of the SRA Code of Conduct for Firms:*** This rule is entitled compliance and business systems. ***Rule 2.1(a) of the SRA Code of Conduct for Firms:*** Requires that firms must have effective governance structures, arrangements, systems and controls in place that ensure compliance with all the SRA's regulatory arrangements, as well	Up to 6 marks To achieve more than a pass candidates must demonstrate depth to knowledge base by discussing that there is no regulatory

as with other regulatory and legislative requirements, which apply. ***Rule 2.1(b) of the SRA Code of Conduct for Firms:*** Requires that firms must have effective governance structures, arrangements, systems and controls in place that ensure compliance by managers and employees with the SRA's regulatory arrangements which apply to them. ***Rule 2.1(c) of the SRA Code of Conduct for Firms:*** Requires that firms must have effective governance structures, arrangements, systems and controls in place that ensure compliance by managers and interest holders and those employed or contracted do not cause or substantially contribute to a breach of the SRA's regulatory arrangements. ***Rule 2.1(d) of the SRA Code of Conduct for Firms:*** Requires that firms must have effective governance structures, arrangements, systems and controls in place that ensure compliance officers are able to discharge their duties. ***Rule 2.2 of the SRA Code of Conduct for Firms:*** Requires firms to keep and maintain records to demonstrate compliance with your obligations under the SRA's regulatory arrangements. ***Rule 2.3 of the SRA Code of Conduct for Firms:*** Requires firms to remain accountable for compliance with the SRA's regulatory arrangements where work is carried out through others, including managers and those employed or contracted with. ***Rule 2.4 of the SRA Code of Conduct for Firms:*** Requires firms to actively monitor financial stability and business viability. ***Rule 2.5 of the SRA Code of Conduct for Firms:*** Requires firms to identify, monitor and manage all material risks to the business, including those which may arise from connected practices.	requirement to have a risk management policy but how the rules encourage firms to manage risk
Any relevant point on the management of risk (credit any point raised and applied) e.g: ***A risk management policy:*** Having a risk management policy would make it easier for the SRA to engage with firms with a view to resolving any compliance issues. Such a policy would outline the risks posed to a business and provides a set of actions to be taken to both prevent the risk from occurring and reduce the impact of the risk should it happen. ***No strict regulatory requirement to develop a risk management policy:*** The SRA Standards and Regulations do not require firms to have a risk management policy but devising and maintaining one will allow firms to identify, monitor and manage risks. It will provide evidence to the SRA that they are running the business in accordance with sound risk management principles and managing risks to comply with the SRA Rules.	Up to 2 marks

Risk management principles: The SRA does not define the risk management principles that it expects firms and individuals to employ when running a business.	
Any relevant point on the business theory of managing risks (credit any point raised and applied) e.g: ***A risk management policy:*** A risk management policy helps identify risks and implement a plan for managing them. Risks include both opportunities and threats, and both should be managed through the risk management process. ***Contents:*** A risk management policy should contain details of risk management responsibilities; your definition of risk; your process for identifying and/or reporting risk; your system for evaluating risk; details of the risks you have identified; and responses to those risks, i.e. your process for managing them. ***Risk Management Process:*** Such a process would have an initiation, which would define the scope and objectives of risk management. A key output is the risk management plan. It would allow for anyone to identify risk and raise a risk as an issue which should be documented on risk log. ***Risk Evaluation:*** consider how likely is it that the risk will come to pass and have an impact on the project; and if it does come to pass and how severe will the consequences be. These aspects can be given a score and one multiplied by the other in order to produce an overall severity rating for the risk. This then gives you an indicator of which risks require your most attention and resources. ***Risk Log or Register:*** Risks are normally recorded and tracked using a risk log or register. The log is usually managed by the project manager and will often also have review and diary dates in order to help keep track.	Up to 2 marks
Any relevant point to describe the roles of a COLP and COFA (credit any point raised and applied) e.g: ***The SRA Authorisation Rules 2019, SRA Account Rules and the SRA Codes of Conduct:*** Would need to be complied with. ***Rule 8.1 of the SRA Authorisation Rules:*** Sets out the requirement for compliance officers and their functions, one of which is that they are required to report failures. ***Rule 9.1 of the SRA Code of Conduct for Firms:*** Sets out what a COLP is required to do. ***Rule 9.2 of the SRA Code of Conduct for Firms:*** Sets out what a COFA is required to do.	Up to 1 mark

Question 4:	Outline the potential pitfalls and risks that a costs firm may face when they implement performance management strategies.
Total Marks Attainable Fail = 0-4.9 Pass = 5+ Merit = 6+ Distinction = 7+	10
Indicative Content	**Marks**
Required: Candidates should explain what is meant by performance management and should outline the risks faced by firms, e.g: ***Performance Management:*** Performance management is strategic as well as operational. Its aim is to ensure that employees contribute positively to business objectives. It is a process for establishing a shared workforce understanding about what is to be achieved at an organisation level. It is about aligning the organisational objectives with the employees' agreed measures, skills, competency requirements, development plans and the delivery of results. ***Highlight risks:*** unfair dismissal, discrimination and breach of contract (including wrongful dismissal and constructive dismissal). ***Bullying:*** Additional Risks may be identified, for example bullying. The Employment Rights Act 1996 provides basic protection, although the concepts of "bullying" and "harassment" are not defined within it. The Protection from Harassment Act 1997, originally designed to deal with stalkers, has been used by both employees and employers. Whistleblowers who have been bullied or harassed may rely on the Public Interest Disclosure Act 1988.	Up to 2 marks To achieve more than a pass candidates must apply their knowledge base to the question set and should not simply cite authority but think about the risks presented
Credit any point that further develops the risk of unfair dismissal, e.g: ***Unfair Dismissal Claims:*** Most common claim. Employees can only claim unfair dismissal if they've worked for a qualifying period - unless they're claiming for an automatically unfair reason. Claim may be made by an employee who is dismissed on grounds of incapability. ***Section 94 of the Employment Rights Act 1996:*** Provides that every employee has the right not to be unfairly dismissed. ***Section 98 of the Employment Rights Act 1996:*** Poor performance falls into one of the potentially 'fair' categories for dismissing an employee. To avoid a claim of unfair dismissal an employer would need to demonstrate an honest and reasonable belief in an employee's incapability to do the job to the level required and demonstrate that it has carried out	Up to 4 marks

the performance management and dismissal process in a fair and reasonable way. ***Section 108 of the Employment Rights Act 1996:*** requires an individual to have been in employment for one year's continuous service unless they were employed after 6 April 2012 when a two-year requirement applies. ***Assessing an honest and reasonable belief in an employee's incapability to do the job to the level required and way performance management process carried out:*** The Employment Tribunal will in part have regard to whether the employer has complied with the ACAS Code of Practice on Disciplinary and Grievance matters (ACAS Code). Not only will a failure to follow the ACAS Code be taken into account in determining if the dismissal is fair, it can also result in an increase in any unfair dismissal compensation by up to 25%.	
Any other relevant point to describe a discrimination claim (credit any case law/points of law correctly cited and applied) e.g: ***A discrimination claim:*** For example, if an employee contends that the only reason they were subjected to a performance management process was because of a protected characteristic. ***Equality Act 2010:*** Makes it law that every private, public and voluntary organisation must not discriminate against employees and people that use their services because of particular characteristics. ***Section 4 of the Equality Act 2010:*** Sets out the protected characteristics (age, disability, gender reassignment, marriage and civil partnerships, pregnancy or maternity, race, religion or belief, sex, sexual orientation (gay, lesbian or bisexual)). ***Section 120(1) of the Equality Act 2010:*** Gives an employment tribunal jurisdiction to hear complaints of discrimination under the act. ***Section 123(1) of the Equality Act 2010:*** The normal time limit for making a discrimination claim in the employment tribunal is 3 months less one day from the date when the discrimination happened. ***Under section 124(2) of the Equality Act 2010:*** A tribunal may make a declaration as to the rights of the complainant and the respondent in relation to the matters to which the proceedings relate; order the respondent to pay compensation to the complainant or make an appropriate recommendation.	Up to 4 marks

Any other relevant point to describe a breach of contract claim (credit any case law/points of law correctly cited and applied) e.g: ***A breach of contract claim:*** In relation to any failure by the employer to comply with its contractual obligations, including any contractual capability or disciplinary procedure. ***Wrongful dismissal:*** Occurs when someone is dismissed contrary to their contract of employment, i.e wrongful dismissal claims are normally made where there has been a breach of contract. An employee will likely have a claim for wrongful dismissal if they have been dismissed without any notice, without having statutory notice, without letting them serve the full notice period in their contract and by not following contractual procedure. There is no qualifying period for wrongful dismissal claim. ***Claims of wrongful dismissal:*** Can be made to a tribunal within three months of the dismissal, or a case can be taken at county or High Court up to six years after the dismissal. Claims brought to a tribunal are capped at £25,000, and legal costs can be recovered if the claim is taken to the county or High Court. Whilst damages are based on salary and benefits for the notice period, there is no cap on the amount that can be awarded. ***Constructive dismissal claims:*** A change to an employee's working conditions, employee conduct or aspects of their job description in an effort to force their resignation. Constructive dismissal is a way of establishing the fact of dismissal when there has been no formal termination of the contract by the employer. ***Malik and Mahmud v. Bank of Credit; Mahmud v. Bank of Credit [1997]:*** Confirmed the existence of an implied term of mutual trust and confidence in all employment contracts. ***Patel v RCMS Ltd (1999):*** Patel brought a breach of contract claim and RCMS lodged a counterclaim for damages for Patel's breach of contract in failing to return computer equipment. Patel had failed to make her claim in time and was barred, but the tribunal allowed RCMS's claim. The EAT found that there was nothing in law to say that if the employee's claim failed, the employer's claim was automatically lost, and ruled that it should be heard.	Up to 4 marks

Section B

Candidates must answer **THREE** questions in this section out of the following five.

Question 5:	You are a Costs Lawyer at a busy SRA regulated firm, Dominos and Denton LLP, in Canterbury. You have been working on the file of Debbie Maryland. The fee earner with conduct of the matter is Amrit Singh. Debbie Maryland is the Claimant in a personal injury matter. Her claim was issued in the County Court, valued at approximately £120,000. You drafted the budget on the matter, which was filed and served in accordance with the deadline under the Civil Procedure Rules. After service and filing of the budget, Amrit received medical expert evidence in the case. Initially the case appeared to concern a probable mild traumatic brain injury, but the evidence now shows that Debbie had a neuropsychiatric condition, which caused her to become seriously disabled needing assistance from the State in her day to day care. This meant that the value of the claim would need to be increased to somewhere in the region of £2.5m. The evidence was received less than a month after the budget had been filed and just before the budgeting hearing. A revised schedule of loss was pleaded, but it was not feasible to seek to revise the budget at the hearing because the impact of the new medical evidence, other than on value, was not clear at that time. At the hearing directions were made, budgets approved, and the case transferred to the High Court. You have now been asked for your advice on the matter. Amrit has instructed that the case has turned out to be more complex than previously anticipated. In the original budget assumptions, you had indicated much of the disclosure had already taken place. The assumptions state that 5 lever arch files had been disclosed. You budgeted future costs on the assumption there would be follow up disclosure requests and had also assumed that there was likely to be a 4 day trial in the County Court and that 8 files would be needed at trial. Disclosure has now grown to 10 files and it is expected that there will be a further 10. Amrit wishes to know whether an application should be made to amend the budget, or if the matter is best left to be dealt with when costs are assessed. You are required to write the body of an email to Amrit setting out the steps that should be taken in the matter, particularly whether an application should be made to amend the budget, or if it is a matter best left to assessment.

Total Marks Attainable	20

Fail	up to 9.9	An answer which deals with the basic requirements of the question but in dealing with those requirements only does so superficially and does not address, as a minimum, all the criteria expected of a pass grade (set out in full below). The answer will only demonstrate an awareness of some of the more obvious issues, for example simply outlining the rules in relation to budgets and CMOs. The answer may not indicate any real understanding that costs management is in place in order to ensure cases are managed proportionately. The answer will be weak in its presentation of points and its application of the law to the facts. There will be little evidence that the candidate fully understands how the CPR operates and any view expressed will be unsupported by evidence or authority.
Pass	10+	An answer which addresses MOST of the following points: When a CMO will be made, how the court may approach making a CMO, what needs to be done in order to make an application to amend a budget after a CMO has been made, what amounts to a significant development when making an application to amend a budget, the impact of a CMO on assessment and what amounts to a good reason to depart. Candidates will demonstrate a good depth of knowledge of the subject with good application and some analysis, although the candidate may demonstrate some areas of weakness.
Merit	12+	An answer which addresses ALL of the points required for a pass (as set out above) PLUS there will be evidence that the candidate has a very good understanding of the law in some depth but this may be expressed poorly or may be weak in places and strong in others. The candidate is likely to have discussed the importance of assumptions in demonstrating to the court what is a significant development is and that the current authority mainly concerns downward departures on budgeted costs at assessment. There is likely to be some discussion on the new procedure and therefore the uncertainty as to steps that need to be taken. The candidate should show very good, appropriate references to the relevant law and authority. Work should be written to a very high standard with few, if any, grammatical errors or spelling mistakes etc.
Distinction	14+	An answer which includes ALL the requirements for a pass (as set out above) PLUS the candidates' answers should demonstrate a deep and detailed knowledge of law in this area and an ability to deal confidently with relevant principles. All views expressed by the candidate should be supported by relevant authority and/or case law throughout. The candidate may make the link between applications to amend and the conflict between agreed/approved budgets. The candidate should be able to show critical assessment and capacity for independent thought on the topic. Work should be written to an exceptionally high standard with few, if any, grammatical errors or spelling mistakes etc. taking into account it has been written under exam conditions.

Indicative Content	**Marks**
Required: An explanation as to applicability of costs budgets, how to make an application to amend a budget and the test for departing from a CMO on detailed assessment, e.g: ***CPR 3.12 (1):*** Applies to all Part 7 Multi Track with four exceptions. ***CPR 3.12 (2):*** Purpose of costs management is the court should manage both the steps to be taken and the costs to be incurred by the parties to any proceedings so as to further the overriding objective. ***CPR 3 PD 3E, para 2:*** Even where parties do not have to file budgets the court has discretion to order them to do so. ***CPR 3.15A(1):*** Revising party must revise its budgeted costs upwards or downwards if significant developments in the litigation warrant such revisions. ***CPR 3.18:*** When costs are assessed on the standard basis where there is a costs management order consideration must be given to the last approved or agreed costs budget of the receiving party	Up to 2 marks

and there cannot be any departure from this unless there is good reason. Additionally, any comments made on incurred costs can be considered.	
Credit a discussion on what is meant by a Costs Management Order, e.g: ***CPR 3.15(2):*** Where a costs budget has been filed, the court will make a costs management order unless it considers the matter can be conducted justly and proportionately without a costs management order. A costs management order will record the extent the incurred costs were agreed; the extent budgeted costs were agreed; and the approval of budgeted costs once revised. ***CPR 3.15(3):*** Once a CMO has been made, the court can control the recoverable costs. ***CPR 3.15(4):*** The court can record on the face of the order any comments on the incurred costs to be taken into account at detailed assessment. ***CPR 3.15(8):*** The CMO concerns only the phase totals; it is not the role of the judge to fix or approve hourly rates; and any detail within the budget is for reference purposes only. ***Redfern v Corby Borough Council [2014]:*** The court may, in determining the amount of a given phase to which approval is given, take into account the costs incurred to date by setting a figure which impliedly criticises those costs as being excessive and leaving very little for prospective costs. ***CIP Properties Ltd v Galliford Try Infrastructure Ltd [2015]:*** The court may achieve a similar result by approving budget figures in a way which sets a benchmark figure in relation to anticipated recoverable incurred costs so that, if the party recovers more than that figure in relation to incurred costs, the amount for future costs is reduced pound for pound. ***Harrison v University Hospitals Coventry and Warwickshire NHS Trust [2017]:*** Incurred costs will be subject to DA and the estimated costs will be subject to the test of proportionality. ***Yirenki v Ministry of Defence [2018]:*** A master conducting a cost budgeting exercise had erred in principle in approving specific hours and disbursements rather than total figures for each phase of the proceedings and in expressly reserving matters, such as hourly rates, to be disputed at a detailed assessment.	Up to 4 marks
Credit a more detailed explanation of applications to amend a budget and what is meant by significant development, e.g: ***CPR 3.15A(1):*** Revising party must revise its budgeted costs upwards or downwards if significant developments in the litigation warrant such revisions.	Up to 10 marks To achieve more than a pass candidates should not simply cite the authority but

CPR 3.15A(2): Any budgets revised must be submitted promptly by the revising party to the other parties for agreement, and subsequently to the court. ***CPR 3.15A(3):*** The revising party must serve particulars of the variation proposed on every other party, using the form prescribed by Practice Direction 3E, confine the particulars to the additional costs occasioned by the significant development; and certify, in the form prescribed by Practice Direction 3E, that the additional costs are not included in any previous budgeted costs or variation. ***CPR 3.15A(4):*** The revising party must submit the particulars of variation promptly to the court, together with the last approved or agreed budget, and with an explanation of the points of difference if they have not been agreed. ***CPR 3.15A(5):*** The court may approve, vary or disallow the proposed variations, having regard to any significant developments which have occurred since the date when the previous budget was approved or agreed, or may list a further costs management hearing. ***CPR 3.15A(6):*** Where the court makes an order for variation, it may vary the budget for costs related to that variation which have been incurred prior to the order for variation but after the costs management order. ***Murray & Anor v Neil Dowlman Architecture Ltd [2013]:*** The court takes a dim view of amending a budget due to a mistake once it is approved. ***Elvanite Full Circle Ltd. v Amec Earth & Environmental (UK) Ltd. [2013]:*** On assessment Coulson J refused to amend the budget. Costs were £531,946 and the budget was £268,488. Application to amend after judgment is a contradiction in terms. Any application to vary should be made immediately if it becomes apparent that the original budget costs have been exceeded by more than a minimal amount. ***Simpson v MGN Ltd [2015]:*** There will be sanctions for not making an application albeit that the judge will not want to impose a disproportionate and unjust sanction to ensure compliance with the overriding objective. ***Churchill v Boot [2016]:*** A change in the value of the claim or a longer trial length did not amount to a significant development in the case. In this case conduct was a significant consideration for the court in arriving at their decision. ***Sharp v Blank [2017]:*** Interim applications may be significant development. When making an application to amend incurred costs should not be amended on the last approved budget. ***CPR 3.17(4):*** If interim applications are made which, reasonably, were not included in a budget, then the costs of such interim	apply it to the facts of the scenario

applications shall be treated as additional to the approved budgets. ***Al-Najar v the Cumberland Hotel (London) Ltd [2018]:*** The claimants were entitled to revise their trial budget because there had been a significant development in the litigation. Disclosure was of a scale and complexity that was much larger than had actually been budgeted for, which was not envisaged and which could not have been reasonably envisaged. ***BDW Trading Ltd v Lantoom Ltd [2020]:*** Disclosure that involved five times more documents than anticipated and expressly assumed in a claimant's budget was a significant development justifying its costs budget being updated. ***Thompson v NSL Ltd [2021]:*** 'Significant development' requiring budget revision need not be a specific event but can be a "collection of factors" which mean that the nature of the claim has changed. ***Persimmon Homes Ltd & Anor v Osborne Clark LLP [2021]:*** Be prompt in making an application. Not every development in litigation will amount to a significant development.	
Credit discussion on assessment and good reason to depart, e.g: ***CPR PD 44, 3.2:*** Where there is no CMO in place and the costs exceed the budget by 20% or more the receiving party must serve a statement of reasons with the bill. ***Harrison v University Hospitals Coventry and Warwickshire NHS Trust [2017]:*** CPR 3.18 is not ambiguous. Estimated costs agreed and subject to a Cost Management Order have already, in theory, been through a detailed assessment. It would be going against the intent of the rule to require another detailed assessment of estimated costs to be performed without 'good reason'. ***Merrix v Heart of England NHS Trust [2017]:*** Carr J did not define what a 'good reason' to depart from the budget would be. BUT if the party had spent less than the budgeted sum, complying with the indemnity principle would be a good reason. She also commented that, when considering hourly rates, changing the rates might be a good reason to award a different sum for certain phases. ***Vertannes v United Lincolnshire Hospitals NHS Trust [2018]:*** Receiving party was ordered to re draw a bill of costs. A CMO cannot be deemed superseded. Even where there is, on the face of it, a good reason to depart this isn't a good reason to depart from the CMO generally. ***RNB v London Borough of Newham [2017]:*** Hourly rates have also been deemed a good reason to depart because they are a mandatory component in Precedent H which cannot be subjected to the rigours of detailed assessment at the CCMC.	Up to 8 marks To achieve more than a pass candidates should demonstrate real awareness that persuading the court to depart from a CMO will be difficult and case dependant depending on the evidence

Bains v Royal Wolverhampton NHS Trust [2017]: High Court decision held the opposite that a reduction of hourly rates for incurred costs was not a good reason to depart from the CMO. ***Nash v Ministry of Defence [2018]:*** A reduction in hourly rates for incurred costs does not appear to mean it follows that there should be a reduction on budgeted costs. ***Jallow v Ministry of Defence [2018]:*** SCCO decision. Followed Bains and Nash, a reduction of hourly rates for incurred costs did not mean the same rates should be applied to budgeted costs. ***Barts Health NHS Trust v Hilrie Rose Salmon [2019]:*** The indemnity principle is a good reason to depart. Once you have established a good reason for a phase you are free to challenge any other sums within that phase without identifying further good reason. ***Maurice Hutson & Ors v Tata Steel UK Ltd [2020]:*** High Court rejected the argument that a longer-than-expected procedural timetable in a large group action was good reason to revise the claimants' budget upwards. ***Chapman v Norfolk and Norwich University Hospitals NHS Foundation Trust [2020]:*** Not spending the totality of the budgeted figure for a phase because of settlement is not in itself a good reason to depart. There would need to be very clear evidence of obvious overspending in a particular phase before the court could even begin to entertain arguments that there was a good reason to depart from the budgeted phase figure if the amount spent comes within the budget. ***Utting v City College Norwich [2020]:*** Underspending on a budget phase is not in itself a good reason to depart from the budget, a costs judge has ruled in the latest lower court ruling on the issue.	

Question 6:	As a self-employed Costs Lawyer, you take instructions from various firms across the country. You have recently been instructed by Ms Lister, a senior solicitor at Harrison and Clarkson LLP based in Norwich. The firm are regulated by the Solicitors Regulatory Authority and specialise in clinical negligence claims. You have been working on the file of Mr Harper. Mr Harper sought damages against Barts Health NHS Trust for clinical negligence. His claim was settled for £5,750. You drafted his bill of costs, which totalled £19,201.22. This included the recoverable element of the ATE insurance premium of £5,189. The policy was a block-rated policy. The Respondent produced a lengthy set of Points of Dispute. Many of the points were generic and repetitive, with numerous references to authorities and requests for further information. A

	challenge to the ATE insurance premium was also made, but this was included in a separate set of submissions. This document also included lengthy citation of authority, together with a paragraph about the public purse. The paragraph stated that as a matter of public importance, the Court must ensure that ATE premiums which are held to be recoverable in principle are assessed in proportionate and reasonable sums. The Respondent's submissions then suggested that at the outset Mr Harper's prospects of losing the case were very low and calculated what was described as a reasonable and proportionate premium to be £250. In the alternative, the Respondent put forward what it said was a comparable policy which had been obtained with a premium of between £1,900 and £2,003.20. The costs were the subject of a provisional assessment by Deputy District Judge Topper and you've now had sight of the outcome of that assessment. As to reasonableness, Deputy District Judge Topper concluded that it was reasonable to incur the ATE premium. As to proportionality, however, he noted that a comparable premium approach had been adopted in satisfaction of achieving the overriding objective and proportionality. He reduced the premium to £2,003.20, adopting the comparable policy value put forward by the Respondent. You are of the view that an application should be made for a review of the provisional assessment, the main point in issue being the recoverability of the ATE insurance premium. Write the body of an email to Ms Lister advising why you believe there should be a review in this case.
Total Marks Attainable	20

Fail	up to 9.9	This mark should be awarded to candidates whose papers fail to address any of the requirements of the question, or only touch on some of the more obvious points without dealing with them or addressing them adequately. An answer which makes little or no sense OR is so poorly written as to lack coherence OR the answer will only demonstrate an awareness of some of the more obvious issues and is likely to be poorly written.
Pass	10+	An answer which addresses MOST of the following points: Definitions and salient points in respect of ATE and premiums, recoverability pre and post LASPO and the exception to the general rule in respect of clinical negligence matters. Candidates will demonstrate a good depth of knowledge of the subject (i.e. a good understanding of the legislative framework around the recoverability of premiums) with good application and some analysis having regard to the facts, although candidates may demonstrate some areas of weakness.

Merit	12+	For a mark in this band, the answer will deal with ALL of the requirements required for a pass however, candidates will have produced responses that have more depth and more application and analysis, as appropriate. The answer should also address ALL of the following points: the applicability of the CPR to premiums i.e the assessment of premiums in proportionate and reasonable sums, the argument that there were comparable cheaper products on the market and the likelihood of the premium being reduced on assessment. The answer is also likely to include some discussion on the reasonableness of premiums. Candidates will demonstrate a very good depth of knowledge of the subject (i.e. a good understanding of the legislative framework around the recoverability of premiums) with good application and some analysis having regard to the facts, although candidates may demonstrate some areas of weakness.
Distinction	14+	An answer which includes ALL the requirements for a pass and merit (as set out above) PLUS the candidates' answers should demonstrate a deep and detailed knowledge of law in this area and an ability to deal confidently with relevant principles. Candidates will provide an excellent advice setting out the likelihood of the challenges succeeding. All views expressed by candidates should be supported by relevant authority and/or case law. Work should be written to an exceptionally high standard taking into consideration that it is written in exam conditions.

Indicative Content	**Marks**
Required: Candidates must demonstrate knowledge of the legislative framework governing the recoverability of ATE premiums, e.g: ***Generally:*** The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) renders that ATE premiums are no longer recoverable from the paying party. ***Section 46(1) of the Legal Aid Sentencing and Punishment of Offenders Act 2012:*** Introduced a new section 58C of the Courts and Legal Services Act 1990 which prevents recovery of any premium for an after the event insurance policy. ***Section 58C(1) of the Courts and Legal Services Act 1990:*** A costs order made in favour of a party to proceedings who has taken out a costs insurance policy may not include provision requiring the payment of an amount in respect of all or part of the premium of the policy, unless permitted under subsection section 58C(2) of the Courts and Legal Services Act 1990. ***Section 58C(2) of the Courts and Legal Services Act 1990:*** The Lord Chancellor may make regulations in clinical negligence cases permitting for the recovery of ATE premiums in relations to medical experts reports. ***Recovery of Costs Insurance Premiums in Clinical Negligence Proceedings (No 2) Regulations 2013:*** Insurance premiums are recoverable where the insurance is against the risk of incurring experts fees re liability and causation in clinical negligence proceedings, the part of the policy recoverable relates to the experts reports, and the damages claimed are valued at £1000.00 or more. ***Peterborough & Stamford Hospital NHS Trust v McMenemy [2017]:*** There are no other rules or practice directions to give guidance on the assessment and recoverability of premiums and it was	Up to 5 marks

commented in the C of A decision that this ought to be looked at by the Rules Committee.	
Candidates should be credited for any discussion on reviews of provisional assessments, e.g: ***CPR 47.15:*** Provides that either party can request an oral hearing up to 21 days after receipt of the paper determination. The scope of this hearing is strictly confined. It is not a rehearing where all issues are up for grabs, but a review. ***CPR 47.15(7):*** When a provisional assessment has been carried out, the court will send a copy of the bill, as provisionally assessed, to each party with a notice stating that any party who wishes to challenge any aspect of the provisional assessment must, within 21 days of the receipt of the notice, file and serve on all other parties a written request for an oral hearing. If no such request is filed and served within that period, the provisional assessment shall be binding upon the parties, save in exceptional circumstances. ***CPR 47.15(8):*** The written request must identify the item or items in the court's provisional assessment which are sought to be reviewed at the hearing; and provide a time estimate for the hearing. ***CPR 47.15(9):*** The court will fix a date for the hearing and give at least 14 days' notice of the time and place of the hearing to all parties.	Up to 3 marks
Credit any discussion on the court's discretion, general challenges to premiums and reasonableness, e.g: ***Section 51 of the Senior Courts Act 1981 and CPR 44.2:*** Court has discretion as to costs BUT emphasis on proportionality because of the standard basis of assessment (CPR 44.3(2) and the overriding objective). ***CPR 44.3(2):*** Where the amount of costs is to be assessed on the standard basis, the court will only allow costs which are proportionate to the matters in issue. Costs which are disproportionate in amount may be disallowed or reduced even if they were reasonably or necessarily incurred; and resolve any doubt which it may have as to whether costs were reasonably and proportionately incurred or were reasonable and proportionate in amount in favour of the paying party. ***CPR 44.3(3):*** Where the amount of costs is to be assessed on the indemnity basis, the court will resolve any doubt which it may have as to whether costs were reasonably incurred or were reasonable in amount in favour of the receiving party. ***Whatever basis:*** Reasonableness would always be considered. ***There have been a number of challenges to ATE premiums:*** Not all sum paid was premium, the premium is too high compared to	Up to 7 marks

others available on the market and the formula used leads to disproportionate premium. ***Emily Noakes v Heart of England Foundation NHS Trust [2015]:*** Identifying which part of the premium relates to experts' reports may be difficult. In this case the defendant argued that the premium was not recoverable because there were two separate parts to the premium and it was argued the policy did not comply with the new regulations. ***Callery v Gray (No 1) [2001]:*** A costs judge was asked by the Court of Appeal to investigate the reasonableness of the ATE premium. The following points were made: a high limit of indemnity does not of itself indicate an unreasonable premium; block risk policies are not unreasonable; the premium to be allowed is the total premium paid, not the pure underwriting risk premium; assessment fees and profit costs of complying with the policy are recoverable; the receiving party need not have made the best choice, it just needs to be a reasonable choice when choosing the particular ATE insurer; it is reasonable to insure before sending the pre-action letter to the other side; it is reasonable to wait until the defendant's reaction to the claim is known; and if the premium is at or above the top of the range of other policies, the purchaser needs to explain why it chose this insurance—the court may disallow some elements of the premium if they are inflated or do not relate to insuring a costs liability. ***Allan Coleman v Medtronic Ltd [2016]:*** The case determined that a claimant will not be held to be unreasonable even when taking out ATE insurance to protect. ***Callery v Gray (No 2) [2002]:*** Costs judges do not have the expertise to second guess the insurance market, still less to deconstruct a policy that is offered as a package into its constituent parts. This was a Supreme Court decision. ***Rogers v Merthyr Tydfil [2007]:*** Followed the decision in Callery v Gray. ***Peterborough & Stamford Hospital NHS Trust v McMenemy [2017]:*** Confirmed that Callery v Gray and Rogers v Merthyr Tydfil were still good law.	
Credit any discussion on whether proportionality applies to ATE premiums, e.g: ***BNM v MGN Ltd [2016]:*** Master Gordon-Saker, amongst other things, considered whether the new test of proportionality should apply to recoverable premiums. In this case, at first instance, it was decided that the new test of proportionality does apply to recoverable premiums.	Up to 4 marks To achieve more than a pass there must be strong evidence that the candidate is able to apply the authority to the

King v Basildon & Thurrock Hospital NHS Trust [2016]: The test of proportionality in CPR 44.3(5) did not apply to additional liabilities. The proportionality of additional liabilities should be dealt with under the old rules which existed before the Legal Aid, Sentencing and Punishment of Offenders Act 2012 came into force. ***Murrell v Cambridge University Hospital NHS Trust [2017]:*** confirmed the old test was applicable, the new definition of costs under CPR 44.1 did not include additional liabilities. ***BNM V MGN LTD [2017]:*** Court of Appeal ruled that the new definition of costs does not include additional liabilities. Where a CFA was signed before 1 April 2013, CPR 44.3(5) does not apply to additional liabilities ***Peterborough & Stamford Hospital NHS Trust v McMenemy [2017]:*** ATE premium taken out after 1 April 2013, Court of Appeal held that the new proportionality test applies to post-LASPO clinical negligence ATE premiums. The CPR is engaged when assessing recoverability of ATE premiums and they are subject to the scrutiny of the Court. The Court require expert evidence if a premium is to be challenged. Callery remains good law.	facts of the question
Credit any discussion on how proportionality should be applied to ATE premiums, e.g: ***The tests of proportionality:*** Lownds v Home Office 2002 for old test and CPR 44.3(2) and (5) for new test. ***Lownds v Home Office 2002:*** Approach (item by item then stand back) (items disproportionate but necessary are recoverable) applicable. ***CPR 44.3(2)****: costs which are disproportionate can be disallowed or reduced even where reasonably incurred* ***CPR 44.3(5)(a) to (f):*** Lists the factors to be taken into account when considering if costs are proportionate. costs are proportionate if they bear a reasonable relationship to sums in issue, value of non-monetary relief, complexity of litigation, additional work generated by conduct, wider factors, vulnerability. ***BNM v MGN Ltd [2017]:*** Two stage approach: Line by line reduction considering reasonableness and then a line by line reduction considering proportionality. New definition of costs does not include additional liabilities in pre-LAPSO CFAs. CPR44.3(5) does not apply to additional liabilities even if ATE incepted after 1 April 2013. ***May v Wavell Group [2016]:*** Two stage approach: Line by line considering reasonableness and then a broad brush deduction to reach a 'proportionate' figure.	Up to 5 marks To achieve more than a pass there must be strong evidence that the candidate is able to apply the authority to the facts of the question

May v Wavell Group [2017]: The CPR do not state that test has to be undertaken in two stages but likely that when the test is applied there would be a two-stage assessment. Whether the relationship is reasonable is a matter of judgment, rather than discretion, which requires attribution of weight, and sometimes no weight, to each of the factors in CPR 44.3(5)(a) to (e). ***Mitchell v Gilling Smith [2017]:*** An unreported SCCO decision, held that CPR 44.3(5) did apply to post LASPO premiums and that arguments based on hindsight were irrelevant for the purpose of CPR 44.3(5). In this case an after-the-event insurance premium of £10,000 for costs relating to medical experts' reports was held not to be disproportionate in a clinical negligence claim that settled for £200,000 even though only the sum of £2,000 was ultimately paid for expert evidence. ***West and Demouilpied v Stockport NHS Foundation Trust [2020]:*** Proportionality is a two stage test and once reasonableness has been considered the Court should remove all unavoidable costs before making any deduction to reach a proportionate figure. Unavoidable costs may include ATE premiums. The Court require expert evidence if a premium is to be challenged. Callery number 2 remains good law. If there are to be future challenges to premiums they should be run as test cases.	

Question 7:	You work as a costs lawyer for Brown and Taylor Solicitors, who are based in the West Midlands. Mrs Brown is a family lawyer at the firm who specialises in divorce, property and finance. She is a Collaborative Lawyer and one of the few Family Solicitor/Mediators in the West Midlands. Mrs Brown has approached you for assistance in relation to one of her clients, Mrs Betty Sumpter. In 2020, after 27 years, Mr and Mrs Sumpter's marriage came to an end. The impact of COVID-19 brought underlying relationship difficulties to a head. The couple have two children, Jenny Sumpter (d.o.b 10/07/1995) and Harry Sumpter (d.o.b 26/11/1997). At the time of separation the matrimonial assets were valued at £572,000. The matrimonial home was valued at £450,000. There is no mortgage on the property. Mr Sumpter has a good pension with a cash equivalent value of £122,000. Mr Sumpter is in full time employment earning £72,000 gross per annum and Mrs Sumpter works part time earning £12,000 gross per annum. The Financial Dispute Resolution (FDR) hearing took place and the District Judge made it clear that she believed the parties should not be in court and she did not want to see the matter proceed to a Final Hearing. She believed the parties could

	reach a settlement and she indicated that an appropriate settlement in the case would be somewhere in the region of a 55-60% share of the matrimonial assets to Mrs Sumpter. Costs in the matter are escalating. At the FDR the Form H for each party showed combined legal expenses of £9,500, which were estimated to increase by £15,000 if the matter proceeded to a Final Hearing. Mrs Sumpter desperately wants to reach an agreement, but Mr Sumpter is refusing to engage in meaningful negotiations. Mrs Sumpter is really concerned about the costs in the matter and Mrs Brown has approached you to advise on the same. You are required to write the body of an email to Mrs Sumpter setting out how costs in family cases are usually dealt with, how the costs in this type of case should be dealt with and what rules the Court should consider when making a Costs Order.
Total Marks Attainable	20

Fail	up to 9.9	This mark should be awarded to candidates whose papers fail to address any of the requirements of the question, or only touch on some of the more obvious points without dealing with them or addressing them adequately. An answer which makes little or no sense OR is so poorly written as to lack coherence OR the answer will only demonstrate an awareness of some of the more obvious issues and is likely to be poorly written.
Pass	10+	An answer which includes MOST of the requirements, namely: An explanation of what family proceedings are, explanations of the three costs regimes in family proceedings and an explanation as to the rules on assessment under the CPR. The answers will be written to a reasonable standard, but may contain some grammatical errors or spelling mistakes etc. Appropriate authority will be used throughout although some points advanced may not be supported.
Merit	12+	For a mark in this band, the answer will deal with ALL of the requirements required for a pass however, candidates will have produced responses that have more depth and more application and analysis, as appropriate. Candidates will have identified the no order regime would be applicable in this scenario and if the court were minded to make an order in the client's favour then the starting point would be the conduct of the parties, as defined by the FPR. Candidates will have produced responses which are written to a high standard with few, if any, grammatical errors or spelling mistakes etc.
Distinction	14+	An answer which includes ALL of the requirements for a pass (as set out above) PLUS demonstrates an excellent depth of knowledge. Excellent application of the law to the arguments made and critical analysis of the same. It is likely that an observation would have been made that in this scenario there was an attempt to settle this matter by the making of an offer. All views expressed by the candidate should be supported by relevant authority and/or case law. Work which is written to an exceptionally high standard with few, if any, grammatical errors or spelling mistakes etc. taking into account it has been written under exam conditions.

Indicative Content	**Marks**
Required (consideration as to what is meant by a family case e.g): ***Family cases may include (for example):*** Marriage and civil partnership; Matrimonial and partnership finance; The care of children either by their parents or by the state; Domestic abuse;	Up to 2 marks

The way in which a family home is occupied; Child abduction; Egg and sperm donors; and Gender recognition. ***No single source provides an all-encompassing definition of family proceedings:*** Section 58A of the Courts and Legal Services Act 1990 and the Courts Act 2003.	
Credit a discussion on how costs in family cases are usually dealt with, e.g ***FPR or CPR:*** In some family cases the CPR (CPR 44-48) will apply rather than the FPR 2010. ***Family Procedure Rules 2010:*** Apply to family proceedings and use the definition found within Section 75(3) Courts Act 2003. ***Rule 2.1 of the Family Procedure Rules 2010:*** Rules apply to family proceedings in the High Court and the Family Court. ***Rule 2.3 of the Family Procedure Rules 2010:*** Family proceedings are defined with reference to section 75(3) of the Courts Act 2003. ***Section 75(3) of the Courts Act 2003:*** Defines family proceedings as those in the Family Court and proceedings in the Family Division of the High Court where they cannot be heard by another division. ***Rule 28 and the Practice Direction 28A of the Family Procedure Rules 2010:*** Contain the costs provisions.	Up to 4 marks To achieve more than a pass the candidate must not simply cite the law but demonstrate an understanding of how the rules operate
Credit a discussion as to what the costs regimes are in family proceedings, e.g: ***The three costs regimes in family proceedings:*** Clean sheet, No Order and Costs follow the event. ***The 'clean sheet' regime:*** Follows the FPR costs rules. This regime applies in all cases heard in the Family Court other than financial remedy proceedings. It also applies to those proceedings heard in the Family Division of the High Court which can only be allocated to the Family Division. This regime means there is unlikely to be any costs shifting. ***The 'no order regime':*** Prevails in all financial remedy proceedings. This regime means there is unlikely to be any costs shifting. ***The 'costs follow the event' regime:*** From the CPR, generally requires the unsuccessful party to pay the costs of the successful party. This is the costs regime applicable to the Family Division of the High Court when dealing with proceedings under statutes which can be allocated to other divisions of the High Court.	Up to 3 marks
Credit discussion on how the costs in this type of case should be dealt with, i.e the No Order regime, e.g:	Up to 3 marks To achieve more than a pass there

Financial remedy proceedings and proceedings in connection with a financial remedy: The general rule is that there shall be no order as to costs in financial remedy proceedings. This regime applies to the substantive final hearing of an application for an order in financial remedy proceedings and to interim variation orders. ***Proceedings in connection with a financial remedy:*** Such proceedings include: Interim orders; Interim hearings; Final orders to set aside an application; Determination of a beneficial share in property; and Disposing of the application other than by final financial order. ***Rule 28.3(1) of the Family Procedure Rules 2010:*** Rule 28.3 applies to financial remedy proceedings. ***Rule 28.3(2) of the Family Procedure Rules 2010:*** The CPR apply with some modifications. The court does not have discretion as to costs (CPR 44.2 (1)), the factors that the court should consider when making an order do not apply (CPR 44.2 (4)) and nor does the definition of conduct within the CPR (CPR 44.2 (5)). ***Rule 28.3(4)(b) of the Family Procedure Rules 2010:*** Defines financial remedy proceedings as proceedings requiring a financial order. ***Rule 28.3(5) of the Family Procedure Rules 2010:*** The general rule is that the court will not make an order for costs against the unsuccessful party.	must be strong evidence that the candidate is able to apply the authority to the facts of the question
Credit discussion on what rules the Court should consider when making a costs order in this case, e.g: ***Rule 28.3(6) of the Family Procedure Rules 2010:*** The court may make an order if it is considered appropriate on the grounds of conduct. ***Rule 28.3(7)(a) of the Family Procedure Rules 2010:*** Conduct is defined so as to include any failure by a party to comply with these rules, any order of the court or any practice direction which the court considers relevant. ***Rule 28.3(7)(b) of the Family Procedure Rules 2010:*** Conduct is defined so as to include any open offer to settle made by a party. ***Rule 28.3(7)(c) of the Family Procedure Rules 2010:*** Conduct is defined so as to include whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue. ***Rule 28.3(7)(d) of the Family Procedure Rules 2010:*** Conduct is defined so as to include the manner in which a party has pursued or responded to the application or a particular allegation or issue.	Up to 4 marks To achieve more than a pass there must be strong evidence that the candidate is able to apply the authority to the facts of the question

Rule 28.3(7)(e) of the Family Procedure Rules 2010: Conduct is defined so as to include any other aspect of a party's conduct in relation to proceedings which the court considers relevant. ***Rule 28.3(7)(f) of the Family Procedure Rules 2010:*** Conduct is defined so as to include the financial effect on the parties of any costs order. ***Indemnity costs are unusual in family proceedings:*** Unless the conduct of a litigant is considered in some material respect(s) to be unreasonable or a disproportionate use of the court's time and resources. (*H v Dent (Re an Application for Committal (No. 2: Costs))* [2015]).	
Credit discussion on the clean sheet regime, e.g: ***Clean sheet regime:*** This regime provides that the starting point is that there will be no costs shifting, parties bear their own costs, examples include Children Act 1989 proceedings (both public and private). ***Rule 28.1 of the Family Procedure Rules 2010:*** The court may make such order as it considers just. ***Rule 28.2 of the Family Procedure Rules 2010:*** The Costs provisions in the CPR will apply with some modification, for example; this rule disapplies the general rule (CPR 44.2(2)) and basis of assessment. The court's discretion (CPR 44.2(1)), the factors to take into account when making an order (CPR 44.2(4)) and the definition of conduct (CPR 44.2(5)) are not excluded and therefore do apply. ***Solomon v Solomon (2013):*** If the court decide to make an order where there is costs shifting then the starting point should be costs follow the event.	Up to 4 marks
Credit discussion on the costs follow the event regime, e.g: ***Costs follow the event regime:*** Costs shifting, the general rule is likely to apply, for example in TOLATA 1996 claims. ***CPR 44-48:*** Apply as usual.	Up to 2 marks
Any relevant point to describe costs assessment in family proceedings e.g: ***Costs assessment in family proceedings:*** Where they do not involve legal aid they are assessed in accordance with the CPR. The CPR apply to all between the parties costs assessments. ***CPR 44.3(1)(a) and CPR 44.3(2):*** On an assessment on the standard basis the court will only allow costs that are proportionate to the matters in issue and resolve any doubt as to whether they were reasonably incurred or reasonable and proportionate in amount in favour of the paying party.	Up to 2 marks

CPR 44.3(1)(b) and CPR 44.3(3): Where costs are assessed on an indemnity basis the amount recoverable under an indemnity costs order may be significantly higher as the court will consider any doubt as to whether costs are reasonably incurred or reasonable in amount in favour of the receiving party.	

Question 8:	As an independent Costs Lawyer you are instructed by a number of firms on a variety of matters. However, the bulk of your work is costing Court of Protection files. One of the solicitors who regularly instructs you, Mr Terry from Terry and Walsh LLP, has contacted you about a query he has in relation to a contentious probate matter. Whilst this is not work you routinely do, you have extensive experience in this type of dispute. Mr Terry's client, Jeremy Henderson, is the executer and a beneficiary of his elderly neighbour's Will. Mr Henderson made the appointment for his neighbour, Mr Henry Cartwright, to make the Will and he also drove Mr Cartwright to the solicitor's office for the appointment. The Will replaced an earlier Will and was not executed at the solicitor's office, but was executed elsewhere. Mr Cartwright's original Will left his entire estate to be divided equally between his two daughters, Tamsin and Jenny. The later Will left his house, the main asset in the estate, in its entirety to Mr Henderson. Mr Cartwright died on the 26 March 2020. His daughters are challenging the validity of the Will. Tamsin thinks that Mr Henderson pressurised and coerced Mr Cartwright. She believes that Mr Henderson's forceful personality, together with her father's vulnerability and his dependence on Mr Henderson meant that the later Will is not valid. Jenny's position is slightly different, she has not advanced a positive claim that the Will is invalid, but wants the Will to be proved in solemn form. As part of the advice to Mr Henderson, Mr Terry would like to include some information on the way costs may be dealt with in contentious probate matters. Mr Terry has therefore approached you for your help. Write the body of a memo to Mr Terry setting out the rules on costs in contentious probate matters, with specific consideration of the general rule under the CPR.
Total Marks Attainable	20

Fail	up to 9.9	This mark should be awarded where candidates: fail to advise on the framework of the rules governing the granting of a costs capping order, fail to adhere to the instructions provided in the question completely or in a substantial part of the

		answer. An answer which makes little or no sense or is so poorly written as to lack coherence.
Pass	10+	Candidates may have considered MOST of the following: the general rule and its applicability in contentious probate matters, the three exceptions to the general rule in contentious probate and the propositions in Kostic. Credit will be given to any reasonably written answer and any reasonable conclusion. Candidates should use appropriate references to the relevant law and authority throughout but not all points advanced may be appropriately supported.
Merit	12+	An answer which includes ALL of the requirements for a pass (as set out above) PLUS Candidates will have produced responses that have more depth and with more application to the facts provided. There will also be a demonstration that the candidate is able to analyse, as appropriate. Candidates are likely to have recognised that in this scenario there is a personal representative who may obtain costs from the estate unless paid by another party, the case involves the exception within the CPR where no positive case has been advanced and the final party may have been the cause of the litigation which may trigger an exception in spiers. Candidates will have produced responses which are written to a high standard with few, if any, grammatical errors or spelling mistakes etc. taking into account it is written under exam conditions.
Distinction	14+	An answer which includes ALL of the requirements for a pass (as set out above) PLUS the candidates' answers should demonstrate a deep and detailed knowledge of law in this area and an ability to deal confidently with relevant principles. All views expressed by candidates should be supported by relevant authority. Candidates should have a clear and reasoned view as to the rules on costs capping orders. The advice should be very well structured. Work should be written to an exceptionally high standard with few, if any, grammatical errors or spelling mistakes etc. taking into account it has been written under exam conditions.

Indicative Content	**Marks**
Required: discussion of the application of the CPR in contentious probate cases and the three exceptions to the general, e.g : ***CPR 44.2(2)(a):*** The general rule that costs follow the event applies to costs in non-contentious probate, contentious probate and Inheritance (Provision for Family and Dependents) Act 1975 claims. Following this rule, the costs of contentious probate proceedings should be paid by one or more of the parties rather than by the estate. ***CPR 44.2(2)(b):*** The court does retain the power to 'make a different order' in contentious probate matters. ***CPR 44.2(4):*** The relevant factors the court should consider when making an order for costs (includes conduct). ***CPR 44.2(5):*** Sets out what conduct means and this includes (under CPR 44.2(5)(a)) any relevant pre-action protocol. Whilst not a pre-action protocol, the Association of Contentious Trust and Probate Specialists' (ACTAPS) Code is explicitly referred to within this part of the CPR. ***CPR 57.7(5):*** Contains the first of three exceptions to when costs should not follow the event in probate. This is the procedure for requiring a will to be proved without advancing a positive case. ***Spiers v English [1907]:*** Contains exception 2 and 3, where a testator had been the cause of the litigation, costs should come out of the estate; and where the circumstances led reasonably	Up to 4 marks To achieve more than a pass the candidate must not simply cite the law but demonstrate an understanding of how the rules operate

to an investigation of the matter, costs should be borne by both sides. ***Re Good, deceased; Carapeto v Good and Others [2002] EWHC 640:*** The normal rules as to costs contained in the CPR should also be followed in probate actions save only that the judge should also take account of the guidance in the Spiers case, where an alternative costs order might be made.	
Credit any relevant point in relation to a discussion of the exception in CPR 57.7.5, e.g: ***CPR 57.7(5)(a):*** A defendant may give notice in his defence that he does not raise any positive case but insists on the will being proved in solemn form and will cross-examine the witnesses who attested the will. ***CPR 57.7(5)(b):*** If a defendant gives such a notice, the court will not make an order for costs against him unless it considers that there was no reasonable ground for opposing the will. ***Wharton v Bancroft [2012]:*** Where a positive case is advanced the defendant may not be afforded costs protection and an order may be made against them where they are either unsuccessful or discontinue their claim.	Up to 3 marks
Credit any relevant point in relation to a discussion of the first exception in Spiers v English e.g: ***Exception 1:*** Where the testator himself has, or the residuary beneficiaries have, been the cause of the litigation in these cases costs should come out of the estate. ***Mitchell v Gard (1863):*** The 'basis of all rule on this subject should rest upon the degree of blame to be imputed to the respective parties'. ***Kostic v Sir Malcolm Chaplin and Mr Martin Saunders (chairman and secretary of the Conservative Party Association) & HM Attorney-General [2007]:*** Blame is being used in a causal rather than a moral sense. It may be possible for the testator's incapacity to trigger the exception just as readily as his failure to make a clear will. ***Re Cutcliffe's Estate [1959]:*** Does not apply to a testator who gives beneficiaries a false impression of what is going to be in his will. ***Wharton v Bancroft [2012]:*** Norris J pointed out one unfortunate consequence of the first exception laid down in *Spiers v English* is in many circumstances to require a beneficiary who succeeds in proving the will to pay the costs of the losing challengers: where, for example, there is no residue.	Up to 5 marks To achieve more than a pass there must be strong evidence that the candidate is able to apply the authority to the facts of the question

Burgess v Penny [2019]: Conduct in its broadest sense is a factor in some of the principles behind costs awards in probate claims. On a "half-win" basis, the court considered that the proper starting position was that the brother and sisters should each pay half of the others' costs however other factors may lead the court to depart from this approach.	
Credit any relevant point in relation to a discussion of the second exception in Spiers v English e.g: ***Exception 2:*** Where neither the testator nor the residuary beneficiaries are to blame for the litigation, but circumstances lead reasonably to an investigation of the matter: parties should bear their own costs ***Davies v Gregory (1873):*** If having 'taken all proper steps to inform themselves as to the facts of the case' the challengers nevertheless 'bona fide believe in the existence of a state of things which, if it did exist, would justify litigation, then, although no blame should attach to the testator or to the executors and persons interested in the residue, each party must bear his own costs'. ***Boughton v Knight* [1873]:** There was no correlation between eccentricity and testamentary incapacity.	Up to 3 marks To achieve more than a pass there must be strong evidence that the candidate is able to apply the authority to the facts of the question
A discussion of the 4 propositions in *Kostic* e.g: ***Kostic v Sir Malcolm Chaplin and Mr Martin Saunders (chairman and secretary of the Conservative Party Association) & HM Attorney-General [2007] EWHC 2909 (Ch):*** Mr Justice Henderson held that the two recognised exceptions from *Spiers* were guidelines not straitjackets. He went on and made a number of propositions as to the meaning of the exceptions based on previous authority. ***Proposition 1:*** In order for the first exception to apply, the touchstone was whether it was the testator's own conduct or the conduct of those interested in the residue that caused the litigation which had led to his Will being surrounded with confusion or uncertainty in law or fact. If it was the testator's own conduct it should not matter whether the problem related to the state in which the deceased left his testamentary papers, for example, where a will could not be found, or to the capacity of the deceased to make a will. ***Proposition 2:*** Moral blameworthiness was not the criterion for the application of the first exception. ***Proposition 3:*** There was no correlation between eccentricity and testamentary incapacity. ***Proposition 4:*** The second exception applied, and each party would bear their own costs, where neither the testator nor the persons interested in the residue had been to blame, but where the opponents of the will had been led reasonably to the bona fide belief that there were good grounds for impeaching the	Up to 4 marks

Will. The trend of more recent authorities was to encourage a very careful scrutiny of any case in which the first exception was said to apply and to narrow, rather than extend, the circumstances in which it would be held to be engaged. Further, each side should bear its own costs in an intermediate period of the proceedings up to the date on which expert reports were exchanged; where after costs should follow the event.	
A discussion on where a personal representative has incurred costs on behalf of the estate, e.g: ***CPR 46.3(1)(a):*** Applicable where a person is or has been a party to any proceedings in the capacity of trustee or personal representative. ***CPR 46.3(1)(b):*** CPR 44.5 (amount of costs where costs are payable under a contract) does not apply. ***CPR 46.3(2):*** The general rule is that that person is entitled to be paid the costs of those proceedings, insofar as they are not recovered from or paid by any other person, out of the relevant trust fund or estate. ***CPR 46.3(3):***Where that person is entitled to be paid any of those costs out of the fund or estate, those costs will be assessed on the indemnity basis. ***Re Coles Estate [1962]:*** Personal representative's prima facie right to recover costs from the estate unless deprived of them by Order of the Court. ***McCabe v MaCabe [2015]:*** Unsuccessful challenge to the Will where costs followed the event. Where the personal representatives were joined to the case by the losing party and the case did not turn on their evidence, for the Solicitors costs as Executor to be taken out of the Estate would have deprived the winning party. The losing party also had to pay them from an interpretation of the Wharton v Bancroft ruling.	Up to 3 marks
Credit any other relevant point made, e.g: ***Re Plant deceased [1926]:*** The court considered whether the executor should have his costs out of the estate unless he had acted unreasonably. Scrutton LJ warned: 'I should be reluctant to do anything to create the idea that unsuccessful litigants might get their costs out of the estate'. ***Under CPR 57.11(1):*** CPR 38 does not apply to probate claims. CPR 38 sets out the rules on discontinuance. ***James v James and Ors [2018]:*** Confirms that CPR 36 applies in contentious probate matters. In this case the offer made in this case was not a valid Part 36 offer because it was inconsistent with the wording of Part 36. Accordingly, whilst it was a letter to which the Court could have regard in the exercise of its discretion on costs, it was not one to which the more advantageous consequences of Part 36 applied.	Up to 2 marks

Question 9:	You work in the costs department for an SRA regulated firm in Peterborough, Kemp and Sweeny LLP. Mr Kemp, a partner at the firm, is instructed by Harper Investment Partners in proceedings concerning the ownership of the Harper Group. The Harper Group is comprised of several companies. Mr Kemp was instructed to apply, on short notice, for an Interim Injunction against George Tennyson. The injunction was to restrain the use of certain confidential information and to seek delivery up of a laptop. The form of the injunction was largely agreed between the parties in advance of the hearing. It was granted at the short notice hearing and costs were reserved. George Tennyson gave his in principle consent to the continuation of the Injunction and the injunction was continued at the return hearing. Additionally, the Judge noted that it had not been "possible or necessary to resolve the underlying merits of what is a clearly a hotly disputed case", and that he was "not resolving who is right or wrong". However, the Judge then went on to order that costs be paid by George Tennyson, with immediate assessment and payment on account. He described this as the "usual order" on the basis that a "successful party's costs are paid by the unsuccessful party". George Tennyson has appealed. It is George Tennyson's position that the Judge made an error in principle for not following the rule that costs of an Interim Injunction should normally be reserved until determination of the substantive issue. Mr Kemp has approached you for your assistance and has asked you to draft a preliminary advice on the matter, setting out how the costs of any injunction proceedings would ordinarily be dealt with. Write the body of a memo to Mr Kemp detailing how the costs of any injunction proceedings would ordinarily be dealt with and whether you believe that costs should have been reserved in this instance.
Total Marks Attainable	20

Fail	up to 9.9	This mark should be awarded to candidates whose papers fail to address any of the requirements of the question, or only touch on some of the more obvious points without dealing with them or addressing them adequately. An answer which makes little or no sense OR is so poorly written as to lack coherence OR the answer will only demonstrate an awareness of some of the more obvious issues and is likely to be poorly written.
Pass	10+	An answer which includes MOST of the requirements, namely: An explanation of the normal rule in costs and the three situations that need to be considered when offering advice on costs in relation to injunctions. The primary focus of the question may have been missed with candidates simply providing a general framework, although there will be evidence that the candidate has the knowledge that is fit for purpose. The answers will be written to a reasonable standard, but may contain some grammatical errors or spelling

		mistakes etc. Appropriate authority will be used throughout although some points advanced may not be supported.
Merit	12+	This band will deal with ALL the requirements and the focus of the response will be the general rule on costs where an injunction has been granted. This will include a detailed explanation of the general rule that costs follow the event and the court not being able to determine who the 'winner' is until the final determination of the matter. Candidates will have produced responses that have more depth and with more application to the facts provided. There will also be a demonstration that the candidate is able to analyse, as appropriate. Candidates will have produced responses which are written to a high standard with few, if any, grammatical errors or spelling mistakes etc. taking into account it is written under exam conditions.
Distinction	14+	An answer which includes ALL of the requirements for a pass (as set out above) PLUS demonstrates an excellent depth of knowledge. Excellent application of the law to the arguments made and critical analysis of the same. All views expressed by candidates should be supported by relevant authority and/or case law. Work which is written to an exceptionally high standard with few, if any, grammatical errors or spelling mistakes etc.

Indicative Content	**Marks**
Required: A discussion on the Court's discretion as to costs and the general rule in interim injunction applications, e.g: ***Section 51(3) of the Senior Courts Act 1981 and CPR 44.2(1):*** The court shall have full power to determine by whom and to what extent the costs are to be paid. ***CPR 44.2(2)(a):*** The 'normal' rule that 'costs follow the event' applies therefore a claimant granted an interim injunction may understandably expect the court to order the defendant to pay the costs of the application. ***CPR 44.2(2)(b):*** The court may however make any other order. ***CPR 44.2(6) and CPR PD 44, 4.2:*** Orders the court may/can make which includes, for example, reserving the costs of the application. ***Civil Procedure 2020 (the "White Book") at para. 44.6.1:*** Where an interim injunction is granted the court will normally reserve the cost of the application until the determination of the substantive issue (*Desquenne*…) However, the court's hands are not tied and if special factors are present an order for costs may be made and those costs summarily assessed (*Picnic at Ascot)*… ***Digby v Melford Capital Partners and others [2020]:*** The Court of Appeal reaffirmed the general rule that the court should reserve costs where an interim injunction is granted, rejecting the argument that this no longer represented modern practice, which now required adherence to the 'pay as you go' principle.	Up to 6 marks Candidates MUST identify that this is a question about an interim injunction and that the Court has discretion as to costs
Candidates may have discussed the court's discretion in relation to the granting of interim injunctions e.g: ***Section 37(1) of the Senior Courts Act 1981:*** The High Court may by order (whether interlocutory or final) grant an injunction or	Up to 2 marks

appoint a receiver in all cases in which it appears to the court to be just and convenient to do so. ***American Cyanamid Co v Ethicom Ltd [1975]:*** Guidelines to establish whether an applicant's case merited the granting of an interlocutory injunction are: whether there is a serious question to be tried, what would be the balance of convenience of each party should the order be granted (in other words, where does that balance lie?) and whether there are any special factors.	
Credit a discussion on summary assessment and relevance in interim injunction applications, e.g: ***CPR PD 44, 9.2:*** Where the court orders costs at the end of an interim injunction hearing which has lasted one day or less, it can summarily assess the costs of the application at the end of that hearing. ***CPR PD 44, 9.5:*** It is the duty of the parties and their legal representatives to assist the judge in making a summary assessment of costs. Each party who intends to claim costs must prepare and file either a statement of costs (N260) or a schedule: not less than 2 days for fast track trial or not less than 24 hours before other hearings. ***N260A:*** Credit may be given for a discussion of the new pilot and the identification of the relevant form in this case. ***CPR PD 44, 9.10:*** Disproportionate and unreasonable costs will be disallowed. ***CPR 44.3(1)–CPR 44.3(3):*** Basis of Assessment.	Up to 5 marks Candidates SHOULD identify that for interim applications that last less than a day the Court may summarily assess costs but there are alternative situations to be considered
Credit a discussion on the approach to the question of costs where a defendant has successfully resisted an injunction and expects the court to order costs be paid by the claimant, e.g: ***Merck Sharp Dohme Corp v Teva Pharma BV [2013]:*** For costs not to follow the event the court held that the applicant would need to justify coming to court and it can do that by showing that there was a 'sufficiently strong probability that an injunction would be required to prevent the harm to the claimant to justify bringing the proceedings'. ***Neurim Pharmaceuticals (1991) Ltd and another v Generics UK Ltd and another [2020]:*** The High Court found that were an interim injunction was not granted because damages would be a sufficient remedy should be decided now and should not be reserved.	Up to 4 marks
Credit a discussion on the approach to the question of costs where the grant of the interim injunction turns on the balance of convenience, e.g: ***Balance of Convenience:*** When granting an injunction on the balance of convenience the court will weight up the inconvenience/loss to each party. The applicant still has to	Up to 7 marks

persuade the court that the balance of convenience makes the grant of an interim injunction or other related relief more appropriate than its refusal. ***Desquenne et Giral UK Ltd v Richardson [1999]:*** The Court of Appeal held that the costs of an interim injunction application granted on (or agreed by consent on the basis of) the balance of convenience should usually be reserved until trial of the substantive issue because, in such a situation, there is no successful or unsuccessful party at that stage for the purposes of CPR 44.2(2). ***Interflora v Marks & Spencer PLC [2014]:*** The judge found that in this case the general rule should apply because it was a freestanding application and there was no reason why the court should depart from the normal rule. ***Koza Ltd v Koza Altin Isletmeleri AS [2020]:*** The High Court considered the question of costs on successful applications for interim injunctions where the balance of convenience was a decisive factor. The general rule, because at the stage of the interim application there is no winner or loser, would be to reserve costs. However, in this case where the balance of convenience was significantly against the claimant it was possible to deal with costs at the time of the application.	