August 16: Marker Guidance: Unit 2

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. Where a candidate has advanced a point that is not included within the marking rubric please do make a note of the same so that it can be raised at the standardisation meeting.

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 emailed to you along with this document)
- ☑ the marking rubric

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 (all compulsory – 40%)

Question 1:	Explain, with reference to appropriate authority, why the Costs Lawyer Code of Conduct prohibits costs lawyers from handling client money.
Total Marks Attainable Fail = 0-2.4 Pass = 2.5+ Merit = 3+ Distinction = 3.5+	5
Indicative Content	**Marks**
Principle 3 of the Costs Lawyer Code of Conduct generally is about acting in the best interests of the client Principle 3.6 of the Costs Lawyer Code of Conduct: A CL must not accept client money save for disbursements and payment of your proper professional fees.	Up to 2 Marks A pass must include reference to the CLSB code of conduct.
There is no mention of the CLs handling client money in the CLSB Practising Rules. There is no definition of client money within any rules set by the CLSB and therefore you must look to either CILEx or SRA rules for the definition. Rule 1.1 of the SRA Account Rules: The purpose of these rules is to keep client money safe. This aim must always be borne in mind in the application of these rules. Rule 12 of the SRA Account Rules: Categories of money Rule 12.1 of the SRA Account Rules: These rules do not apply to out-of-scope money, save to the limited extent specified in the rules. All other money held or received in the course of practice falls into one or other of the following categories: Rule 12.1(a) of the SRA Account Rules: "client money" - money held or received for a client or as trustee, and all other money which is not Rule 12.1 (b) of the SRA Account Rules: "office money" - money which belongs to you or your firm. CILEx Account Rules: Client Money: money beneficially owned by anyone other than the Authorised Entity. No entity regulation by the CLSB – this may have led to a change in rules in handling client money. LSB have undertaken a lot of research on client money and have even proposed reducing the number of firms entitled to hold client money.	Up to 4 To achieve more than a pass candidates must not simply cite the examples but should show a holistic understanding of the rules including an appreciation (even if not explicitly stated) of the requirement to act in the best interest of the client.

Question 2:	Explain when a lawyer may terminate a retainer. Write a summary, with reference to any relevant law, briefly outlining the implications should a retainer be wrongfully terminated by a lawyer.

Total Marks Attainable Fail = 0-4.9 Pass = 5+ Merit = 6+ Distinction = 7+	10
Indicative Content	**Marks**
Required to pass candidates must refer to contracts and retainers: A retainer is a contract for legal service between a lawyer and client A retainer serves as the right to payment & is fundamental to the recovery of costs where no retainer, no entitlement to charge (**J H Milner & Son v Percy Bilton Ltd [1966**]) Can be in writing, made orally, or implied by conduct (**Groom v Crocker [1939]**) A retainer will be presumed if conduct of the parties shows that a client-solicitor relationship has been established (**Parrott v Etchells [1839]**: Leaving files at a solicitor's office may be sufficient to establish a retainer)	Up to 2 Marks A pass must include an explanation of what a retainer is.
Candidates may refer to termination of a contract and to termination by a solicitor: **Termination by client** At any time & for any reason **Termination by solicitor cases – good cause and reasonable notice** **Examples:** failure to provide funds for disbursements, failure to give adequate instructions, requiring solicitor to behave unlawfully or unethically, obstructing the solicitor / preventing him from dealing with the matter, serious breakdown in confidence between solicitor & client **Solicitors Act 1974 Section 65 (1)&(2)** Client's failure to make a payment on account of costs. ***Wong v Vizards (a firm)*** **[1997] 2 Costs LR 46, QBD: S**olicitor declined to act at a hearing unless substantial payment made on account of a disputed bill. Amount claimed by the solicitor was unreasonable, they had wrongfully terminated the retainer on non-payment and were not entitled to any payment at all for the work done in preparing for the hearing.	Up to 6 Marks

Richard Buxton (Solicitors) v Huw Llewelyn Paul Mills-Owens & Law Society (intervener) (Second Appeal)[2010] EWCA Civ 122 [2010] 3 Costs LR 421 and Wild v Simpson [1919] 2 KB 544: Requirement to act improperly **Consequence of Wrongful Termination** ***Re Romer & Haslam* [1893] 2 QB 286:** If a solicitor wrongfully terminates the retainer, he is not entitled to be paid. ***Wild v Simpson* [1919] 2 KB 544:** Where a solicitor terminates a retainer unreasonably he may not be entitled to payment even on a *quantum meruit* basis. ***Underwood, Son v Piper Lewis* [1894] 2 QB 306:** The law must imply that the contract of the solicitor upon a retainer in the action is an entire contract to conduct the action till the end.	
May also raise some of the following points: Candidates may briefly compare with the right of a client to terminate the retainer at any time and for any reason, but this shouldn't be more than a brief reference. Examples of reasons (effluxion of time, death, bankruptcy, insanity, where a retainer is unlawful) SRA Code of Conduct 2016 Objective O(1.1) Treat clients fairly O(1.3) in deciding to terminate instructions you comply with the law and code. O(1.5) Provide competent and timely service Complied with the principles if: IB(1.7) Consider ceasing to act if can't act in the client's best interest IB(1.10) Where you cease to act, advising the client of their possible options pursuing the matter Not complied with the principles if: IB (1.26) ceasing to act for a client without good reason and without providing reasonable notice	Up to 3 marks
Any other relevant points cited e.g: In Conditional Fee Agreements (CFA) the solicitor will only be paid at the conclusion of the matter and therefore that type of retainer is an entire contract. In non-CFA cases the solicitor's statutory right to charge payments on account in contentious business, pursuant to section 65(2) Solicitors Act 1974, often makes the issue of the nature of the retainer academic.	Up to 2 marks

Standard terms and conditions means that the issue of non payment is usually dealt with expressly in the retainer.	
Credit any case law/points of law cited e.g: To achieve a merit or distinction candidates must state specifically which authority governs the termination of a retainer i.e they must show an ability to apply the law to the question asked rather than just cite the law May discuss validity of retainer – if the retainer is not valid then there would not be any termination Termination by client cases <u>Termination by solicitor cases – good cause and reasonable notice</u> Warmingtons v McMurray [1936] 2 All ER 745 and Re Hall v Barker [1893] 9 Ch D 538 Jessel MR said "It is not reasonable that a solicitor should engage to act for an indefinite number of years, winding up estates, without receiving any payment on which he can maintain himself" Minkin v Cawdery Kaye Fireman & Taylor [2011] EWHC 177 (QB), LS Gaz 03 March 2011 did not succeed on the same argument because the Solicitor's prior failure to comply with it's own contract terms and update their costs estimate that had been grossly exceeded amounted to repudiation of contract. Nor was there sufficient notification given before the contract termination was effected. Hilton v Barker Booth & Eastwood [2005] 1 W.L.R. 567 and Lumley v Gye (1853) 2 E. & B 216 and Young v Robson Rhodes [1999] Lloyd's Rep. P. N. 641: Conflict of interest/Professional embarrassment Re Jones [1896] 1 Ch 222 Suspected duress or undue influence. If the Solicitor is not confident the client is giving instructions freely they can cease to act. If this is because the client has made a decision against their own best interest it is for the Solicitor to explain the consequences and get confirmation of instructions in writing, then there is no reason to cease acting. If it is found that the undue influence or pressure to make certain decisions is being put on the client by their solicitor. Then the retainer may be set aside. <u>Automatic Termination</u> The category of good reason the retainer is automatically terminated we have Pool v Pool [1889] 58 LJP 67 Where the client dies, but the Solicitor can accept instruction to continue the subject claim on behalf of the estate	Up to 4 marks

Yonge v Toynbee [1910] 1 KB 215 The client is declared to not have the mental capacity to give instructions Scott v Fenning [1845] LJ CH 88 Bankruptcy of either Solicitor or Client Wild v Simpson [1919] 2 KB 544 Solicitor was imprisoned and unable to perform the retainer Allen Limited v. Fuglers SCCO No 13 of 2003 The Solicitor was struck off as a Solicitor <u>Additional Work</u> *Bilkus v Stockler Brunton* [2010] 1 WLR 2526: it was held that once the work required under a contract of retainer has been completed if a solicitor undertakes further work the agreement of the client is required. If this is not done the solicitor will not be paid for the further work done. If a solicitor wishes to change the terms of remuneration the agreement of the client is required.	

Question 3:	3. Explain the differences between novation and assignment with reference to recent common law developments.
Total Marks Attainable Fail = 0-4.9 Pass = 5+ Merit = 6+ Distinction = 7+	10
Indicative Content	**Marks**
Required: in order to achieve a pass candidates should define both assignment and novation. Definition of assignment: The agreement between one of the original parties and a new party. It does not create new rights but transfers existing rights under a contract from one party to another. Assignment should be distinguished from Novation. Novation: Where parties to the original contract agree with a new party that the original agreement comes to an end and a new agreement comes into being between one of the original parties and the new party, in relation to the same subject matter and on the same terms.	Up to 4 Marks A pass must include the demonstration that the candidate understands the distinction between novation and assignment.
Any other relevant points cited e.g: Assignment: Two parties. In writing, by deed, same agreement, client not involved but can accept/reject, benefit and burden must pass.	Up to 3 Marks

Novation: Tri party agreement, client involved, different agreement, only benefit passes. <u>Circumstances when a CFA may need to be transferred</u> Firm A goes into administration or closes its doors Current solicitor moves firms and client wants to retain the same agreement Firm A is bought or merges Firm A changes name or practice type	
<u>Key priority for transferring a CFA</u> Maintain the ability to collect a success fee from a losing party in relation to work done after 31 March 2013 when the client moves firms after that date. **Discussion on Legal Expenses Insurance:** LEI policies limit client's liability if claim fails 2 types: 1. BTE pre-dates the cause of the action and ATE obtained after the cause of the action **which is** appropriate where no BTE, or BTE cover has been exhausted **Conditional Fee Agreements:** introduced by Courts and Legal Services Act 1990 **s.58 CLSA 1990 (2):** an agreement which provides for [a solicitor's] fees and expenses to be payable only in specified circumstances **s.58 CLSA 1990 (3):** conditions applicable to all CFAs: must be in writing, must not relate to proceedings which cannot be subject of an enforceable CFA, must comply with any requirements prescribed by the Lord Chancellor **s.58 CLSA 1990 (4):** conditions applicable to CFAs with success fees: must relate to proceedings of a description specified by the Lord Chancellor, must state the percentage by which the basic fees are to be increased, that percentage must not exceed the percentage specified, in relation to the type of proceedings, by the Lord Chancellor **Recoverability of CFA success fees & LEI premiums** **Access to Justice Act 1999:** amended s.58 CLSA 1990 to allow for recovery of success fee (**s.27** AJA 1999) & LEI premium (**s.29**) but Legal Aid, Sentencing & Punishment of Offenders Act 2012 abolished recovery of success fees (**s.44**) and LEI premiums (**s.46**)	Up to 3 Marks
Credit any case law/points of law cited e.g: Halsall v Brizell [1957] The party could not take the benefit under a contract without the corresponding burden. Jenkins v Young Brothers Transport [2006] Where the client was loyally following the Solicitor as they changed firms a few times there was an exception to the rule that prevented personal contracts from being assigned as the benefit and burden of the contract was allowed and CFA validly assigned.	Up to 5 Marks

Davies v Jones [2009] re-iterated that the burden of a contract cannot be assigned. At the first instance of Jones v Spire Healthcare 2015 the first CFA had deemed to be at an end and the subsequent CFA was a new retainer so a novation had taken place. The existing rights under the CFA were not transferrable. Budana v Leeds Teaching Hospitals [2016] Telling the client the injury department was closing and seeking no further instructions amounted to termination of the first retainer. Had the CFA not been terminated an assignment may have been permitted as the higher Court decision in Jenkins showed it was possible for a burden to be assigned. In light of the first CFA being terminated a novation had taken place. Webb v Bromley [2016] The CFA did not comply with Section 58 of the Courts and Legal Services Act 1990 and the Conditional Fee Agreements Order 2013 having more than a 25% success fee and was therefore unenforceable. On the appeal of Jones v Spire Healthcare [2016] the case of Jenkins was authority that allowed the burden under a CFA to be assigned to a new firm and the CFA in this case was validly assigned. It was also suggested at the time that the decision was likely to be appealed further.	

Question 4:	Describe the jurisdiction of first tier tribunals to make an order for costs.
Total Marks Attainable Fail = 0-7.4 Pass = 7.5+ Merit = 9+ Distinction = 10.5+	15
Indicative Content	**Marks**
Required: Candidates must demonstrate knowledge of the tribunal structure an jurisdiction even if they do not list all chambers of the first tier There are seven First Tier Tribunals Social Entitlement Chamber. (Health, Education and Social Care Chamber. Tax Chamber. General Regulatory Chamber. Immigration and Asylum Chamber. War Pensions and Armed Forces Compensation Chamber. Property Chamber.). 2 have no power to award costs at all (Social Entitlement Chamber and the War Pensions and Armed Forces Compensation Chamber). Other 5 may make orders in respect of wasted costs and unreasonable conduct. Relevant rules include: Tribunal Procedure (First Tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008, Tribunal Procedure (First Tier Tribunal) (War Pensions and Armed Forces	Up to 4 Marks To achieve a pass, candidates must demonstrate an understanding of the make-up of the first tier tribunals and provide an outline as to which may award costs and which when the tribunals may make an order for costs.

Compensation Chamber) Rules 2008, Tribunal Procedure (First Tier Tribunal) (Social Entitlement Chamber) Rules 2008.	
Candidate should refer to legislative authority to describe the procedure e.g: **Tribunals, Courts and Enforcement Act 2007:** Tribunals governed by TCEA 2007, but each chamber also governed by its own set of Procedure Rules **Section 29 (1) of the Tribunals, Courts and Enforcement Act 2007:** costs shall be in the discretion of the Tribunal **Section 29 (2) of the Tribunals, Courts and Enforcement Act 2007:** the Tribunal has full power to determine by whom & to what extent costs are to be paid **Section 29 (3) of the Tribunals, Courts and Enforcement Act 2007:** subsections (1) and (2) have effect subject to Tribunal Procedure Rules **Section 29(4) of the Tribunals Courts and Enforcement Act 2007:** orders can be made against a representative **Section 29(5) of the Tribunals Courts and Enforcement Act 2007:** Defines Wasted Costs	Up to 4 Marks
Any other relevant point to describe the procedure e.g: **s.10(1) Tribunal Procedure (First-Tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008:** may make orders for wasted costs (under s.29(4) TCEA 2007) or if Tribunal considers that a party has acted unreasonably in bringing, defending or conducting proceedings **No power to award costs in Social Entitlement Chamber and the War Pensions and Armed Forces Compensation Chamber:** s.10 Tribunal Procedure (First-Tier Tribunal) (Social Entitlement Chamber) Rules 2008; and s.10 Tribunal Procedure (First-Tier Tribunal) (War Pensions & Armed Forces Compensation Chamber) Rules 2008 **<u>Wasted Costs</u>** Harley v McDonald 2001: Are discretionary Ridehalgh v Horsefield 1994: Mere mistake is not sufficient Orchard v SE Electricity Board 1987: Should not be used as a threat **<u>Unreasonable Conduct</u>** Rule 10 (1) of the Tribunal Procedure (First Tier Tribunal) Health, Education and Social Care Chamber) Rules 2008 Also defined in the other chamber specific First Tier Rules where applicable	Up to 7 To achieve a merit or distinction candidates must state specifically which rules give the relevant tribunals the power to make an order for costs i.e they must show an ability to apply the law to the question asked rather than just cite the law
Credit any other relevant law cited where comparisons are drawn to the upper tier e.g:	Up to 2 Marks

To achieve more than a pass, candidates must not simply cite law but should show a greater depth to their knowledge base, this may be done by drawing comparisons to the Upper Tribunals 4 Upper Chambers, 3 Chambers Governed by the Tribunal Procedure (Upper Tribunal) Rules 2008: Administrative Chamber, Tax and Chancery Chamber, Tax and Chancery Chamber. Lands Chamber governed by the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010. May make orders in respect of wasted costs, unreasonable conduct and appeals Appeals (Only the Upper Tribunals can make costs orders in respect of these). Rule 10 (1) of the Tribunal Procedure (Upper Tribunal) Rules 2008. Rule 10 (4) of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010	

SECTION B (choice of 3 out of 5 – 60%)

Question 5:	You work in-house for a medium-sized solicitor's firm specialising in commercial work. The firm has never previously had any major issues with late payment or non-payment of bills. However, recently a number of the firm's main clients have started to be slow to pay their bills. There has also been an increase in the number of clients raising what appears to be nit-picking issues in order to delay payment. Recently, on behalf of Bob's Limousines Limited, the firm has recovered a substantial sum of money; sufficient to discharge the very high five-figure sum that Bob's Limousines Limited owes for costs, disbursements, counsel's fees, VAT and (as stipulated upon the bills in question) interest at 8% per annum on each bill after thirty days from delivery thereof. Rather than just taking the money, the firm has asked you to advise. Prepare the **body** of an advice to the firm in what circumstances a solicitor is entitled to a lien over costs and property recovered.	
Total Marks Attainable Fail = 0-9.9 Pass = 10+ Merit = 12+ Distinction = 14+		20
Indicative Content		**Marks**
Required: to pass candidates must demonstrate an understanding of what a lien is and distinguish between the types of lien. **A lien is:** the right to hold on to a person's property until a debt owed by that person is paid		Up to 4 Marks Required format (body of an advice to the

There are two types of lien: 1. Common law liens (subdivided into retaining & preserving liens) 2. Statutory liens (under s.73 of the Solicitors Act 1974) **Retaining lien:** the right for a solicitor to retain a client's property in their possession until they are paid their outstanding fees **Preserving lien:** the right to ask a court to order that personal property (recovered under a judgment, which the solicitor has helped obtain) stand as security for his costs	firm). The format of the response should dictate language and style. A distinction will not be achievable where a candidate has not used the appropriate format or business language.
Any other relevant point to describe liens (credit any of the following and/or any other relevant point): **<u>Common Law Liens</u> (A Retaining Lien)** ***Leo Abse and Cohen v Evan G Jones Builders Limited* [1984] WL 282817:** Where Eveleigh LJ explained that a solicitor who is discharged by clients in a case they are entitled to hold the papers until his fees are paid. ***Loescher v Dean* [1950] Ch 491:** Sets out that as long as the property over which the lien is to be exercised comes into the solicitor's possession through their position, then they have a lien over that property until their fees are discharged. **Gamlen Chemical Ltd v Rochem Ltd [1980]:** New solicitors may give an undertaking to preserve the lien, and so papers should be released **Udall v Capri Lighting Ltd [1988]:** where a solicitor breaches the undertaking, a claim for compensation can be made (although any award is discretionary, and not a right) **Prekookeanska Plovidba v LNT Lines SrL [1988]: o**nce the solicitor had exercised a lien over money in client account, his entitlement prevailed over a third party injunction seeking payment from that money **Slatter v Ronaldsons (a firm) [2002]:** irrespective of the solicitor's lien, the court might retain a discretion (if the facts warrant it) to order delivery up of the papers **R (on the Application of Malik Law Chambers) v Legal Complaints Service and another [2010]:** solicitors are entitled to exercise a lien does not mean it could never be unreasonable to do so ***Withers LLP v Rybak* [2011] EWHC 1151 (Ch):** Case law on retaining liens. Confirms that the definition of property covers monies held in client account.	Up to 10 Marks

Withers LLP v Langbar [2011]: cannot apply a lien to money held in client a/c for a specific purpose - only general purpose funds **Khans Solicitors v Chifuntwe and SSHD [2012]:** Costs are the client's costs, not the solicitor's (i.e. indemnity principle). Should take necessary steps to preserve their position (e.g. apply to court under s.73) **Your Response Ltd v Datateam Business Media Ltd [2014]:** Cannot exercise a lien over an electronic database or data stored electronically **Common Law Liens (Preserving Liens)** ***Halvanon Insurance Co Ltd v Central Reinsurance Corporation and another* [1988] 3All ER 857**: Application for a preserving lien the solicitors will need to show: ☑ they were instructed by the party; ☑ that they have unpaid fees owing, ☑ that the property in respect of which they seek an order is property recovered, or preserved, or the proceeds of a judgment; and ☑ it was recovered as a result of their work. **Statutory Liens** **Section 73 of the Solicitors Act 1974:** any court in which a solicitor has been employed to prosecute or defend any suit, matter or proceedings may at any time: ☑ declare the solicitor entitled to a charge on any property recovered or preserved through his instrumentality for his assessed costs in relation to that suit, matter or proceeding; and ☑ make such orders for the assessment of those costs and for raising money to pay or for the paying of them out of the property recovered or preserved as the court thinks fit. To rely on this lien the solicitor must have been instructed by the party to prosecute or defend the proceedings and have unpaid costs. This lien also extends to property recovered or preserved. This legislation applies to solicitors only.	
Any other relevant point to applications to the court (credit any of the following and/or any other relevant point): **Applying to Court for a lien: If proceedings are ongoing** **CPR 23:** apply for a lien in the usual way when making an application. **CPR 23.3:** file an application notice **CPR 23.4:** on notice to each respondent. **CPR 23.6:** state what order is sought and the reason. **Applying to Court for a lien: If proceedings not ongoing**	Up to 4 Marks To achieve more than a pass, candidates must not simply cite law but should show a greater depth to their knowledge base, this may be done by showing their ability to apply

CPR 7: issue debt recovery proceedings to recover monies owed under an agreement **Prerequisites:** final statute bill (signed) for all costs & disbursement, lapse of 1 month, no application or order for detailed assessment **Form N1:** for work done & disbursements incurred as a lawyer acting on behalf of the defendant **Claim should:** state that work was done at the request of the defendant & that a final statute bill was delivered, include a claim for interest	the law and offer advise as required by the question

Question 6:	Your solicitor client, Mr Daniel Makin, has been acting on behalf of a client, Mr Ahmed Shah of Shah's Shavings Ltd, in a contract dispute involving the supply of pet bedding. Mr Shah supplies a number of large pet shops nationally. He has just received a request from the representative for the other party, Pets R Us, asking that he submit to arbitration. There is no clause in the contract nor in any other legal provision that would oblige Mr Shah to submit to arbitration, but he is minded to do so if the decision makes commercial sense. Mr Makin requires your advice as to the advantages and disadvantages of arbitration and how the assessment of costs would work if Mr Shah were to submit to arbitration. He particularly wants to know about the impact of the Arbitration Act 1996 as he has no experience of it. a) Explain the advantages and disadvantages of arbitration. **(4 Marks)** b) Briefly outline the procedures for the assessment of costs in arbitration, in what circumstances the assessment must go to court and how an award may be enforced. **(16 marks)**

Total Marks Attainable Fail = 0-9.9 Pass = 10+ Merit = 12+ Distinction = 14+ Divided into a) 10 marks; b) 3 marks; c) 3 marks and d) 4 marks	20
Indicative Content:	**Marks**
Required: a) A short discussion of the main advantages and disadvantages of arbitration may include: cheaper, quicker, certainty because the parties can agree procedure, it is private and therefore more likely to preserve business relationships and the parties can select the arbitrator. Conversely it may not be cheaper, quicker or private if	Up to 4 Marks

you have to go to Court anyway (e.g. to enforce an award). There is also uncertainty if parties cannot agree procedure (protracted discussions) and if it does subsequently go to Court, as Court will determine costs on different basis. Credit should be given for any other reasonable point advanced by the candidate	
b) **to pass candidates must demonstrate an understanding of the framework of the assessment procedure under the Arbitration Act 1996.** **Section 59(1) of the Arbitration Act 1996:** costs in arbitration proceedings fall into three categories; The arbitrator's fees and expenses. The fees and expenses of any arbitral institution concerned. The legal or other costs of the parties. **Section 59(2) of the Arbitration Act 1996:** costs will also include the costs of or incidental to any proceedings when determining the amount of the recoverable costs of the arbitration in accordance to section 63 of the Arbitration Act 1996. **Section 63(3) of the Arbitration Act 1996:** The arbitrator musts assess costs as he 'sees fit'. **Section 63(4) and section 63(1) of the Arbitration Act 1996:** if costs are not determined by agreement or by the arbitrator, the parties can apply to the court (the application should be on-notice) and the court may then determine the recoverable costs. **An award is effectively a final order and under s 66(1) of the Arbitration Act 1996:** can therefore be enforced with the leave of the court if a party fails to comply with it. **Challenges to an award are possible:** by section 67 (as to jurisdiction), section 68 (serious irregularity), and section 69 (point of law).	Up to 4 Marks To pass candidates must refer to the Arbitration Act 1996 and show an ability to apply sections of the Act to the problem question set.
Any other relevant points cited on the general assessment under the Act e.g: b) **Section 60 of the Arbitration Act 1996:** concerns the agreement to pay costs in any event. Such an agreement, for a party to pay the whole or part of the Arbitration, can only be valid in the Arbitration if made after the dispute arose. **Section 61(1) of the Arbitration Act 1996:** The Arbitrator can allocate the costs of the Arbitration between the parties. **Section 61(2) of the Arbitration Act 1996:** For any award of costs, unless the parties have agreed otherwise, the Arbitrator shall award costs on the general principle that costs should follow the event.	Up to 8 Marks

Section 62 of the Arbitration Act 1996: the effect of an agreement or award about costs and stipulates any such agreement extends only to such costs as are recoverable, unless the parties decide otherwise. **Sections 63(4) and (5):** mean that where costs are determined by the arbitrator they are assessed on the standard basis as it was defined before the introduction of the CPR, unless the arbitrator or the court orders otherwise. **Section 65 (1) of the Arbitration Act 1996:** empowers the arbitrator, unless the parties have agreed otherwise, to limit the recoverable costs of the arbitration, or of any part of the arbitral proceedings, to a specified amount. **Section 65 (2) of the Arbitration Act 1996:** allows for the arbitrator to do this at any stage, but requires that it must be done sufficiently in advance of the incurring of costs to which it relates, or the taking of any steps in the proceedings which may be affected by it, for the limit to be taken into account.	
Any other relevant points cited on when the matter may be referred to the Court e.g: b) **Section 28 (2) of the Arbitration Act 1996:** If a party applies to the courts to consider the fees the court may make any adjustments it sees fit **Section 70 of the Arbitration Act 1996:** Contains supplementary provisions. **Section 70(4) of the Arbitration Act 1996:** Where on an application or appeal the Court feel that the award does not contain the tribunal's reasons, or does not set out the tribunal's reasons in sufficient detail to enable the court properly to consider the application or appeal, the court may order the tribunal to state the reasons for its award in sufficient detail for that purpose. **Sections 67-69 of the Arbitration Act 1996:** Cover the situations where an award may be challenged.	Up to 4 Marks
Any other relevant points cited on when the Award may be challenged through the courts e.g: b) **Section 66(2) & (3) of the Arbitration Act 1996:** Where the court gives leave, judgement can be entered in the terms of the award except where the person against whom the order is sought can show that the arbitrator lacked jurisdiction to make the award. If the court finds that the award is not legally valid, it may refuse leave (*Re Stone and Hastie Arb.* [1903] 2 K.B. 463, CA and	Up to 2 Marks

Middlemiss & Gould v Hartlepool Corp [1972] 1 W.L.R. 1643; [1973] 1 All E.R. 172). The procedure to enforce an award is set out in CPR 62.18, the application should include the costs to be included in the order giving permission and if judgment is to be obtained for the costs of any judgment to be entered. **CPR 62.18:** Procedure for Enforcement of an Arbitral Award	
Any other relevant points cited on when the Award may be challenged through the courts e.g: b) **Under section 70(2) of the Arbitration Act 1996:** an application or appeal may not be brought if the applicant or appellant has not first exhausted any available arbitral process of appeal or review, and any available recourse under section 57 of the Arbitration Act 1996 (correction of award or additional award). Timing of An appeal **In accordance to section 70(3) of the Arbitration Act 1996:** any application or appeal must be brought within 28 days of the date of the award or, if there has been any arbitral process of appeal or review, of the date when the applicant or appellant was notified of the result of that process. Arbitrators Reasons **Under section 52(4) of the Arbitration Act 1996:** an award should contain reasons for the award, there is however no sanction within that section for failure to give reasons. Where there are no reasons for a costs award would not render that award void but would allow a party to apply to the court seeking reasons, such an application would be made under section 68 of the Arbitration Act 1996 (see below). It should be noted that where an agreement has been reached to dispense with reasons for the tribunal's award this agreement shall be considered an agreement to exclude the court's jurisdiction under section 69 of the Arbitration Act 1996. In other words, neither party may appeal to the court on a question of law arising out of an award made in the proceedings. **Section 70(4) of the Arbitration Act 1996:** Where on an application or appeal the Court feel that the award does not contain the tribunal's reasons, or does not set out the tribunal's reasons in sufficient detail to enable the court properly to consider the application or appeal, the court may order the tribunal to state the reasons for its award in sufficient detail for that purpose. **Section 70(3) of the Arbitration Act 1996:** In such circumstances, the Court may make such further order as it thinks fit with respect to any additional costs of the arbitration resulting from its order. Substantive Jurisdiction	Up to 3 Marks

Section 67 of the Arbitration Act 1996: a party to arbitral proceedings may (upon notice to the other parties and to the tribunal) apply to the court challenging any award of the arbitral tribunal as to its substantive jurisdiction; or for an order declaring an award made by the tribunal on the merits to be of no effect, in whole or in part, because the tribunal did not have substantive jurisdiction. **Section 67(4) of the Arbitration Act 1996:** Leave must be obtained in order to make an appeal. **Section 67 (3) of the Arbitration Act 1996:** upon such an application, the court may: ☑ Confirm the award. ☑ Vary the award. ☑ Set aside the award in whole or in part. <u>Serious Irregularity</u> **Section 68 of the Arbitration Act 1996:** a party to arbitral proceedings may (upon notice to the other parties and to the tribunal) apply to the court challenging an award in the proceedings on the ground of serious irregularity affecting the tribunal, the proceedings or the award. **Section 68(2) of the Arbitration Act 1996:** defines serious irregularity as an irregularity which the court considers has caused or will cause substantial injustice to the applicant. **Section 68(3) of the Arbitration Act 1996:** If the court finds serious irregularity affecting the tribunal, the proceedings or the award, under the court may: ☑ Remit the award to the tribunal, in whole or in part, for reconsideration. ☑ Set the award aside in whole or in part. ☑ Declare the award to be of no effect, in whole or in part. **Section 68(4) of the Arbitration Act 1996:** Leave must be acquired before any such application is made. <u>Point of Law</u> **Section 69 of the Arbitration Act 1996:** unless otherwise agreed by the parties, a party to arbitral proceedings may (upon notice to the other parties and to the tribunal) appeal to the court on a question of law arising out of an award made in the proceedings. **Under section 69(2) of the Arbitration Act 1996:** an appeal shall not be brought under this section except where there is an agreement with all of the other parties to the proceedings, or with the leave of the court. **Under section 69(7) of the Arbitration Act 1996:** on an appeal under this section the court may:	

☑ Confirm the award. ☑ Vary the award. ☑ Remit the award to the tribunal, in whole or in part, for reconsideration in the light of the court's determination. ☑ Set aside the award in whole or in part.	

Question 7:	You have been instructed by Dominic Durant, a solicitor who works for a large firm in Eastbourne. You have received the file of Heather Scott from him. Dominic Durant acted on behalf of Ms Scott in proceedings against Eastbourne Care Home, a children's home where Ms Scott had resided since she was 8. Ms Scott had suffered sexual abuse whilst residing in that home. She had made allegations of sexual abuse at the hands of the care workers. Dominic took initial instructions during an attendance at Ms Scott's property on the 14 June 2015. Ms Scott instructed that she had suffered many emotional and psychological problems as a result of rape and the sexual abuse. She had disclosed feelings of anxiety, stress, and fear which had made it difficult to adjust or cope for some time afterwards. Ms Scott further disclosed that, as a result of her feelings, she has a long history of criminal convictions; she has been involved in petty offences since the age of 12 and has a history of drug and alcohol misuse. The matter has now concluded with an apology with "no order as to costs". The matter was funded by the LAA (Certificate Number LSP193079A-B2) and the certificate was issued on the 1 July 2015. There is a notice to show cause on the file covering a period of two weeks in relation to a reassessment of means. The profit costs recorded on the file total £9,300 exclusive of VAT. The funding certificate was discharged on the 19 June 2016. You have been asked to provide advice on the next steps, how the costs in the claim should be assessed and the impact of the notice to show cause. Prepare the **body** of an advice to Mr Durant.
Total Marks Attainable Fail = 0-9.9 Pass = 10+ Merit = 12+ Distinction = 14+	20
Indicative Content	**Marks**
Required: to pass candidates are required to demonstrate general knowledge of public funding certificates e.g **Legal Representation:** Differentiated from controlled work (work under a legal help). This is work undertaken under a public funding certificate. **Certificates will:** have a costs limit and detail the scope of the work that may be undertaken. **Certificates that are current are described as live:** but certificates may be "discharged" or "revoked" because for example, clients are	Up to 4 Marks An explanation should be given as to the nature of a funding certificate that has been discharged

no longer eligible or have failed to respond to a Legal Aid Agency request for further information or the legal representative has recommended that the certificate should be discharged or revoked. **The relationship between the Provider and the client ceases upon notice of Discharge:** upon receipt of this notification it might be reasonable to write a closing letter to the client advising them of this fact. The content should be minimal and paid as a routine letter.	
Credit discussion of the notice to show cause e.g: **Notice to Show Cause:** Work should not be claimed for when a "show cause" notice is in place. A "show cause" notice puts an embargo on legal aid certificates until clients are able to "show cause" why it should not be revoked or discharged. **Show Cause Under Funding Code:** Embargo placed on certificate and no work can be claimed for date that show cause is in place even if show cause is subsequently removed **Show Cause under LASPO (intention to withdraw a determination):** If show cause is removed then funding will be continuous (as though show cause was never placed on the certificate). If certificate is withdrawn (discharged/revoked) then no work can be claimed from the date the show cause was placed on the certificate. Provider can undertake work "at risk". **Funding code procedures C55.3:** Rule C55.3 of the procedures states that no further work can be carried out following a show cause being placed on a certificate and, there is no provision that it will be covered if the show cause is subsequently lifted. Work undertaken post show is not claimable subject to the following exceptions: ☑ Work pending appeal, where permission granted to protect clients interests and arising out of the proceedings ☑ Successful appeal and rescinding Discharge/revocation ☑ Closing letters **Show Cause Process under LASPO:** For certificates issued after April 2013, Regulation 42(3) of the Civil Legal Aid (Procedures) Regulations 2012 provides for an equivalent of the show cause procedure under the funding code procedures through notification of an intention to withdraw a determination (see also section 8.36 of the Lord Chancellor's Guidance). The scheme is different in that, if the determination is withdrawn as a result of this procedure, the withdrawal takes place with effect from the initial notification of intention (42(3)). That represents a difference from the position under the funding code in that: 1. The client will not have cost protection, under the Civil Legal Aid (Costs) Regulations 2013, in the period from when	Up to 6 Marks

the Director first notified an intention to withdraw the determination; 2. The provider can carry out work at risk in relation to whether the withdrawal does occur, whereas no work could be carried out within the show cause period under the funding code without express permission irrespective of the ultimate outcome of the show cause. This means that if the show cause/notification of an intention to withdraw a determination is removed we can allow work to be claimed as though there has been no gap in cover. If the determination is subsequently withdrawn (the certificate is discharged) the withdrawal will be effective from the date of the show cause – providers will not be able paid for any work following the date of show cause/intention to withdraw a determination. These provisions are not retrospective and only apply to certificates issued under LASPO **No Instructions from Client:** If the client has failed to provide instructions to their solicitors a show cause should be placed on the certificate giving the client the opportunity to contact their solicitors, failing which the certificate will be discharged. If the certificate is still live and there has been no show cause then a referral should be sent to the legal team for them to place a show cause on the certificate. The claim should be returned to the solicitors pending resolution of the show cause. **Means Reassessment:** Where there is an outstanding means assessment on a live certificate, this must be resolved prior to payment of the claim. In accordance with the billing checklist caseworkers should reject any claim submitted	
Candidates were asked to explain how the costs would be assessed e.g: **CCMS:** Before any bill can be submitted for payment, the case must be discharged and the outcome codes completed on CCMS. The outcome codes are very similar to the codes used on page 2 of the paper Claim 1/1As. Once the case has been discharged and the outcome codes completed, the final bill option is made available on CCMS. **All licensed work (work under a certificate):** is assessed unless a family fixed fee applies. Assessable costs under £2500 excluding VAT are assessed by the LAA on a Claim 1 form, or where a family fixed fee is included this is on Claim 1A form. **Assessable costs over £2500 excluding VAT:** are assessed by the court under Part 47 of the Civil Procedure Rules (detailed assessment). This is under provisional assessment, which is separate to inter partes provisional assessment (CPR 47.15) and is provided under separate procedure (CPR 47.18). This provisional assessment process for legal aid costs has existed since before the introduction of the Civil Procedure Rules in 1999.	**Up to 8 Marks** To achieve a distinction candidates should demonstrate a sound ability to apply the law to the facts of the scenarios presented together with knowledge of how funding certificates operate generally.

The bill of costs is lodged: for provisional assessment with a Form N258A (or D258A for family work). The primary document in assessing costs is the bill of costs or the claim form submitted, which sets out the items and amounts being claimed. Items not appearing in the bill or claim form will not be paid. **The original assessed bill is returned with N253:** "Notice of Amount Allowed on Provisional Assessment" **The solicitor must notify:** counsel of any reduction **If the provider objects:** they can request a hearing within 14 days of receiving notice of provisional assessment. Although it is common for written objections to be sent. **If the provider objects to the outcome of a hearing/response to written objections:** they must then follow the same route as other costs under Part 47, and appeal under Part 52. **If the provider consents:** to the assessment or after outcome of a hearing and/or appeal, they must return the bill of costs with a completed Legal Aid Assessment Certificate EX80a or EX80b (where costs are subject to family fixed fees). **The EX80a/b is approved by the court and returned:** the bill of costs is kept on the court file **A claim for payment of the bill of costs is sent to the LAA using a Claim 1 or Claim 1A form:** This must be sent with: ☑ A copy the bill of costs ☑ Counsel's fee notes ☑ Expert's invoices and disbursement vouchers ☑ Any other supporting evidence required (e.g. copies of court orders made for DNA and Drug testing)	
Candidates should have considered the work claimable following Discharge of the certificate e.g **Where the costs are to be assessed by the LAA:** only the reasonable costs in preparing the claim and the checking and signing the Claim form will be recoverable. Putting the file in order, instructing a Costs Draftsman to prepare the claim and any correspondence arising in this respect would not be recoverable. Please note the comments on bill preparation and escape case where the costs are subject to fixed fee see13.4. **Where the costs have been subject to Detailed Assessment by the Court, what can legitimately be claimed as fee earner case specific functions may include:** 1. Completing N258A (Request for a Detailed Assessment), 2. Letter out to Court, 3. Diarising, 4. Considering provisional assessment, 5. Casting up Bill of Costs 6. Completing EX80A 7. Letter to Court	Up to 4 Marks

Where the court allows these costs on assessment they will not usually be queried: The exceptions are items 4 and 5 which are dependent on whether there has been a reduction on provisional assessment.	
Any other relevant points cited on discharge may be credited e.g: **Discharge/Withdrawal for no claim on the fund:** The process for discharging certificates for no claim on the fund is to discharge the certificate and process a nil final [£0] bill to correctly close the matter. This is not applicable in this scenario. **Discharge/Withdrawal on Contribution Cases:** Where the client is paying contributions on a case the certificate should be manually discharged to the date of the final work on the case, excluding billing. This ensures that the client receives notification that the certificate has been discharged and they can cease paying contributions. Cases where contributions have been paid in should be referred to a refund caseworker post bill paying for consideration. This is unlikely to be applicable in this scenario.	Up to 3 Marks

Question 8:	You work for Commercial Costs Ltd, a firm dealing in legal costs, you have been instructed on a regular basis by Miss A Blackstock who is a solicitor. She has recently taken on a new job with a local firm having been asked by them to set up and run a commercial litigation department for them. She has contacted you as she needs to prepare some promotional material for prospective clients. One of these will be on funding methods in relation to claims in commercial matters. Prepare a **summary** for Miss Blackstock of the methods of funding that should be considered by a solicitor advising her client in relation to a commercial litigation claim.	
Total Marks Attainable Fail = 0-9.9 Pass = 10+ Merit = 12+ Distinction = 14+		20
Indicative Content		**Marks**
Required: to pass candidates must highlight that there are various options to fund a commercial matter e.g **Private funding**: client pays solicitor, who charges at an agreed hourly rate, for work done (in units). On success, client can then seek to recover these costs from the opponent (CPR 44.2, indemnity principle). Rule 12 of the SRA Account Rules 2011 divides money into two categories, namely: Client money and Office money. A payment on account would be client as defined in rule 12.1 of the SRA Account Rules 2011 as being money held or received for a client, or as trustee, and all of the money which is not office money.		Up to 4 marks Question requires candidates to draft a summary of funding options.

BTE LEI: **Sarwar v Alam [2001]:** should undertake investigations. appropriate where anticipated damages are up to £5,000 **ATE:** Is available however now that LASPO has abolished recoverability of premiums these are less favourable. **TPF:** is now becoming a more popular option	
Any relevant points cited on conduct requirements and funding e.g: **SRA Code of Conduct 2011, O(1.6):** you only enter into fee agreements with your clients that are legal, and which you consider are suitable for the client's needs and are in the client's best interests **SRA Code of Conduct 2011, IB(1.13)**: discuss whether potential outcomes of matter will justify the expense/risk involved **SRA Code of Conduct 2011, IB(1.14)**: clearly explain your fees & if/when they are likely to change **SRA Code of Conduct 2011, IB(1.16)**: discuss how the client will pay	Up to 2 Marks To achieve a merit or distinction candidates should not simply cite the relevant rules and principles but must show an ability to play the rules to the scenario before them
Credit any discussion on the historical position of third party funding e.g: **Historically:** a TPF agreement would have been deemed unlawful re: maintenance and champerty **British Cash & Parcel Conveyors v Lamson Store Service Co [1908]:** Maintenance is the procurement, by direct or indirect financial assistance, of another person to institute, carry on or defend civil proceedings without lawful justification **Chitty 28 Ed Vol 1 17 – 054:** Champerty 'occurs when the person maintaining another stipulates for a share of the proceeds of the action or suit' **Seear v Lawson (1880):** TPF is permitted in matters arising out of insolvencies **Criminal Law Act 1967:** abolished the criminal offences (s.13) and torts (s.14) of maintenance and champerty, but agreements may still be unenforceable on the grounds of public policy **Certain contingency fee agreements are permitted by statute:** CFAs (under s.58 CLSA 1990) and DBAs (under s.45 LASPO 2012) **R (Factortame Ltd and others) v Secretary of State for Transport, Local Government & the Regions (No. 8) [2002]:** funding agreement to cover costs of expert evidence held to be lawful as the Claimants remained in control of the conduct of the litigation, there was no realistic prospect of justice being undermined **Arkin v Borchard Lines Ltd and others [2005]:** court gave tacit approval to this type of litigation funding, the normal position now is that courts will approve litigation funding agreements but each	Up to 7 Marks To achieve more than a pass candidates must not simply cite law but should show a greater depth to their knowledge base

case will be judged on its own merits, as courts can still find agreements unenforceable if contrary to public policy, per s.14 CLA 1967	
Credit any substantive discussion on the current position with TPF e.g: **Merchantbridge & Co Ltd and another v Safron General Partner 1 Ltd [2011]:** TPFs may be found liable for the full extent of the claimant's costs **JEB Recoveries LLP v Binstock [2015]:** held that given the current climate and changing attitudes to litigation funding, the agreement did not offend public policy	Up to 2 Marks
To achieve a merit or distinction candidates must show their ability to apply the law to the scenario set e.g: **TPF will be available for cases with good legal merits re:** liability and quantum, funding costs are proportionate to size of claim. There is also a minimum claim size (approximately £350,000). **TPF agreements should be structured:** so that client retains full control over the way in which they conduct their action. This will ensure funding agreement will not be champertous, provided TPF does not take control of the conduct of the litigation **TPF more attractive option in some cases:** since CFA & ATE premiums now not recoverable **TPF could facilitate:** Claimants having the resources to be represented by highly experienced solicitors & counsel **Association of Litigation Funders Code of Conduct:** under which TPF must give assurance to Claimants that, *inter alia*, they will not take control of the litigation & will not terminate funding (unless a materially adverse development occurs). These will offer sound advice on who should be approached for this type of funding. **There are still problems with this type of funding e.g:** Restrictions on maintenance and champerty remain and the courts must decide on the facts of each litigation funding agreement whether the contract is unenforceable on the grounds of public policy	Up to 6 Marks
Credit any substantive discussion on BTE e.g: ***Brown-Quinn and Webster Dixon LLP v Equity Syndicate Management Ltd and Motorplus Ltd* [2012] EWCA 1633:** The Court of Appeal examined in detail the law concerning the right to choose one's own lawyer under a legal expenses policy. A client has freedom of choice of solicitor, but will only recover the non-panel rates determined by the insurer. **The Court of Appeal based its decision on:** Paragraph 33 of the judgement of the European Court of Justice in *Stark v DAS*	Up to 2 Marks

Oesterreichische Allgemeine Rechtsschutz – Versichergung A.G (2011) Case c-293/10. **Insurance Companies (Legal Expenses Insurance) Regulations 1990, Regulation 6 which provides:** Where under a legal expenses insurance contract recourse is had to a lawyer (or other person having such qualifications as may be necessary) to defend, represent or serve the interests of the insured in any inquiry or proceedings, the insured shall be free to choose that lawyer (or other person).	

Question 9:	You are a costs lawyer working in-house for a firm of solicitors, Wright and Brown LLP, in Bradford. As part of your role at the firm you work as a legal cashier in the firm's accounts department. The firm is currently undergoing a large recruitment drive as a result of an influx of commercial work. As a result, the firm's managing partner, Mr Bob Wright, wants to improve training on the accounting rules that apply in practice. As part of the training materials Mr Wright wishes to advise new starters of the role of the Compliance Officers for Finance and Administration (COFAs). Mr Wright recognises that the roles of Compliance Officers for Legal Practice (COLPs) and for Finance and Administration (COFAs) are an integral part of the SRA's move to outcome-focused regulation. Mr Wright would like employees to understand more about the SRA's aim that firms take responsibility for managing risks to their delivery of legal services. Mr Wright would also like the training to cover compliance with Rule 1 of the SRA Account Rules 2011 and the requirement for the firm keep and use separate bank accounts for client and office money. The firm uses dual cash accounts and clients have their own client ledger. Finally, Mr Wright would like the notes to contain details of the money laundering regulations. Mr Wright is conscious that lots of clients have tried to pay invoices in cash and that the reception staff have been unsure as to how to manage queries from those clients. Provide the **body** of the training notes to Mr Wright on the particular aspects he wishes to cover.

Total Marks Attainable Fail = 0-9.9 Pass = 10+ Merit = 12+ Distinction = 14+	20
Indicative Content	**Marks**
Required: **Compliance with Rule 1 of the SRA Account Rules 2011 the firm keep and use separate bank accounts for client and office money:** Rule 1.1 makes it clear that the purpose of the rules is to keep client money safe. **Due Diligence and Money Laundering:** The Money Laundering Regulations 2007 (the 'Regulations') require you to: carry out client due diligence, so that you know who you are dealing with, conduct	Up to 3 Marks To achieve a pass an explanation should be given on the need for firms to comply with the relevant rules regarding the handling of client money, the rules on

ongoing monitoring, so that you know what you are being asked to do and can spot warning signs of money laundering. **All recognised and licensed bodies must nominate a compliance officer for legal practice (COLP) and a compliance officer for finance and administration (COFA):** It is rule 8.5(d) of the SRA Authorisation Rules that requires all firms to have a COFA.	the requirements of a COFA and the rules relating to money laundering.
May also raise the following points on conduct e.g: **Rule 1.2 of the SRA Account Rules 2011:** requires that a firm and their employees must comply with the principles set out in the SRA Handbook (or Code of Conduct 2011) and specifically the outcomes in chapter 7 of the Handbook in relation to the effective financial management of the firm. **Rule 6.1 of the Solicitors Accounts Rules states that:** "all principals in a firm must ensure compliance with the Solicitors Accounts Rules by the principals themselves and by everyone employed in the firm". That duty extends to directors and members of recognised and licensed bodies and to the Compliance Officers for Finance and Administration (COFA) even if the COFA is not a manager of the firm. **Section 92 of the Legal Services Act 2007:** The appointment of a COFA satisfies the requirement under for a licensed body to appoint a Head of Finance and Administration. **Under rule 6 of the accounts rules:** the COFA must ensure compliance with the accounts rules. This obligation is in addition to, not instead of, the duty of all the principals to ensure compliance (the COFA may be subject to this duty both as COFA and as a principal). **Under rule 8.5(e) of the SRA Authorisation Rules:** the COFA of a licensed body must report any breaches, and the COFA of a recognised body must report material breaches, of the accounts rules to the SRA as soon as reasonably practicable. **Regulation 4.8(e) of the SRA Practising Regulations:** The COFA of a recognised sole practitioner has a duty to report material breaches. All COFAs must record any breaches and make those records available to the SRA on request. (See also outcomes 10.3 and 10.4 of Chapter 10 of the SRA Code of Conduct in relation to the general duty to report serious financial difficulty or serious misconduct.) All the principals in a firm must ensure compliance with the rules by the principals themselves and by everyone employed in the firm. This duty also extends to the directors of a recognised body, or a licensed body which is a company, or to the members of a recognised body or license body which is an LLP. It also extends to that COFA of a firm (whether a manager or non- manager). This duty is found in the rule 6.1.	Up to 8 Marks To achieve more than a pass candidates must not simply cite law but should show a greater depth to their knowledge base

***Weston v The Law Society* (1998) The Times, July 15:** is a reminder of how careful a principal must be. The Court of Appeal confirmed that it was appropriate to strike off a lawyer when no dishonesty was alleged. However, the solicitor in question was liable for breaches of the rules committed by his partners even though he had been unaware of them. A partner is responsible for all breaches committed.	
Candidates should also refer to the money laundering offences and defences e.g: **The Proceeds of Crime Act 2002 (POCA):** contains the principal money laundering offences and defences. **Section 327 of the Proceeds of Crime Act 2002:** a person will be liable if he conceals, disguise, converts, transfers or removes criminal property. Concealing or disguising criminal property includes concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it. **Section 328 of the Proceeds of Crime Act 2002:** states that a person commits an offence if he enters into, or becomes concerned in, an arrangement which he knows or suspects facilitates the acquisition, retention, use or control of criminal property by or on behalf of another person. **Section 329 of the Proceeds of Crime Act 2002:** if a person acquires, uses or possesses property for which he has not given adequate consideration, he may be liable of an offence. There are also risks financial sanctions. These are issued by HM Treasury and prevent the use of all economic resources by or for the benefit of a designated individual, either directly or indirectly, without a license. This will include purchasing or selling a property on their behalf. On rare occasions, allegations of unlawful conduct may be made. These may warrant the involvement of the police. **Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013:** when entering into contracts since January 2014, be alert to the which open you up to a number of potential criminal actions. **Regulation 19:** makes it an offence to fail to inform consumers of their right to cancel off-premises contracts. The offence is punishable on summary conviction by a fine. **Regulation 20:** provides a due diligence defence if you can show that the offence occurred due to one of the following: ☑ the act or default of another; or ☑ reliance on information given by another.	Up to 8 Marks To achieve a merit or distinction candidates should make reference to the risk firms and individuals face if due diligence is not followed

You must also be able to show that you have taken all reasonable precautions and exercised all due diligence to prevent the commission of the offence. If an officer of a corporate body has committed the offence, the officer is also guilty of the offence and liable to prosecution and punishment, if one of the following is true: ☑ they consented to or connived in committing the offence; or ☑ the offence is attributable to any neglect on their part. **Regulation 25:** makes it an offence to intentionally obstruct an investigation by authorised officers into breaches of the regulations, or to knowingly make a false statement to an authorised officer. **Regulation 24:** the regulations do not authorise officers to inspect or take possession of privileged material. If you are asked to produce any such material by an authorised officer, you are not required by the regulations to produce it . Solicitors and other professionals are going to be further exposed to criminal liability. **Section 45 of the Serious Crime Act 2015:** introduced the offence of participating in an organised crime group into English law. It has the potential to seriously widen the scope of criminal liability for lawyers and other professionals working in the non-regulated sector.	
Candidates may also refer to the offences under the LSA07 e.g: **Sections 14-17 of the Legal Services Act 2007:** created offences associated with carrying out reserved legal activities with no entitlement. **Section 197 of the Legal Services Act 2007:** creates similar offences for entities. Similar provisions existed before the Act. However, these related to the individual branches of the profession and it is hoped that the consolidation of these provisions will improve transparency and compliance. ***Hudgell, Yeates and Co v Watson (1978)* QB 451:** in this case, one of the partners in a firm of solicitors forgot to renew his certificate, rendering him unqualified and meant that it was illegal for him to practice. A partnership between a solicitor and an unqualified person at that time was prohibited by statute. It was held that the failure to renew his certificate brought the partnership to an end, the partnership became illegal and was automatically dissolved but the court held that the remaining partners could lawfully carry on the business of the partnership. The outcome of this case today would be different due to the Legal Services Act 2007. However, the principle behind the decision continues in that it is illegal for persons to conduct work that they are not authorised to perform.	Up to 3 Marks

The Legal Services Act 2007: created two new criminal offences that are punishable by up to two years in prison under section 44B. **Information Offences:** they relate to the falsification or destruction of information that forms part of an investigation into the conduct of an authorised person. **Also under the LSA07:** preparing a report on a firm's financial position is now required to disclose any suspicions of negligence or fraud on the part of a firm.	
Candidates may also refer to the requirements placed on firms with how to manage receipt of mixed payments e.g: Mixed payments: A lawyer will often receive a cheque which is made up of partly office and partly client money. Rule 18.1 of the SRA Account Rules 2011 defines a "mixed payment" is one which includes client money as well as office money and/or out-of-scope money. It is possible to split the cheque under rule 18.2(a) of the SRA Account Rules 2011. Distinguish between office and client: Rule 12 divides money into two categories, namely: Client money and Office money. Client monies are defined in rule 12.1 of the SRA Account Rules 2011 as being money held or received for a client, or as trustee, and all of the money which is not office money. **Splitting Cheques:** Depending on who regulates the firm within which a lawyer works and depending on how that individual is qualified and regulated, it is possible to split mixed payments. Under the SRA Account Rules 2011 if you do not split a cheque you must pay it all into the client bank account under Rule 18.3 of the SRA Account Rules 2011 and transfer to the office account within 14 days of receipt.	Up to 3 Marks
Candidates may also refer to the requirement for firms to account to HM Customs and Excise regarding VAT e.g: **VAT:** Vat involves two different aspects: Output tax: charged by a business to its customers and Input tax: charged to the business by its suppliers. A business registered for VAT charges its customers output tax and then accounts to HM Customs and Excise for tax. In other words, it acts as an unpaid tax collector. It will normally be possible for such a business to deduct input tax charged to the business from the amount accounted for to HM Customs and Excise, thus reducing or absolving their liability. VAT is chargeable on the supply of goods or services where the supply is a taxable supply and is made by a taxable person in the course or furtherance of a business carried on by him (s 4(1) of the Value Added Tax Act 1994). The elements of the definition are: * supply of goods; supply of services; taxable supply; taxable person and business.	Up to 3 Marks

The person making the supply is liable to account to HM Customs and Excise for the amount of tax which he charges. **Supply of Goods:** This comprises all forms of supply whereby the whole property in goods is transferred, including a gift of goods. **Taxable Supply:** This means any supply of goods or services other than exempt supply. Exempt supplies are listed in Value Added Tax Act 1994, Schedule 9. **Taxable Person:** A person is a taxable person if he is or is required to be registered under the Act. A person must register if, broadly the value of his taxable supplies (not his profit) in the preceding 12 months exceeded a figure specified in each year's budget. A firm of solicitors will almost always have to be registered. Voluntary registration is permitted. A person may register voluntarily in order to recover input tax charged to him. **Business:** VAT is chargeable by a taxable person only on taxable supplies made in the course of furtherance of a business carried on by him. Business includes any trade, profession or vocation, but the term is not limited to these activities since it also covers certain clubs and associations. Although the services of an employee are not generally taxable, Value Added Tax Act 1994 provides that where a person in the course of a business.	