August 2017: 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:	The CLSB Code of Conduct for Costs Lawyers prohibits costs lawyers from handling client money. Explain what is meant by client money and why the CLSB prohibits costs lawyers from handling the same.

Total Marks Attainable Fail = 0-2.4 Pass = 2.5+ Merit = 3+ Distinction = 3.5+	5
Indicative Content	**Marks**
Required (definition of client money e.g): ***No Definition:*** 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 12 of the SRA Account Rules:*** Categories of money. ***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.	Up to 2 marks A pass must include a definition of client money with reference to the SRA or CILEX account rules.
Should contain: ***CLSB Practising Rules:*** There is no mention of costs lawyers handling client money in the CLSB Practising Rules. ***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. ***Principle 3 of the CLSB 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 costs lawyer must not accept client money save for disbursements and payment of your proper professional fees.	Up to 3 marks A pass must include reference to the CLSB code of conduct.
May also raise some of the following points: ***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 definitions of client or office money.	Up to 2 marks To achieve more than a pass, candidates must not simply cite the examples, but should show a

No entity regulation by the CLSB: This may have led to a change in rules in handling client money. ***LSB:*** Has undertaken a lot of research on client money and has even proposed reducing the number of firms entitled to hold client money.	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:	Describe when a solicitor may terminate a retainer and explain the implications should a retainer be wrongfully terminated.
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 ***J H Milner & Son v Percy Bilton Ltd [1966]:*** A retainer serves as the right to payment and is fundamental to the recovery of costs. Where there is no retainer, there is no entitlement to charge ***Groom v Crocker [1939]:*** Can be in writing, made orally, or implied by conduct. ***Parrott v Etchells [1839]:*** Leaving files at a solicitor's office may be sufficient to establish a retainer; a retainer will be presumed if the conduct of the parties shows that a client-solicitor relationship has been established.	Up to 2 marks A pass must include an explanation of what a retainer is.
Required to pass candidates must refer to termination of a contract and to termination by a solicitor: ***Termination by solicitor cases:*** good cause and reasonable notice e.g. 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 and client. ***Solicitors Act 1974 Section 65 (1) and (2):*** client's failure to make a payment on account of costs.	Up to 5 marks

Wong v Vizards (a firm) [1997] 2 Costs LR 46, QBD: solicitor declined to act at a hearing unless there was a 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. ***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:*** cases where there was a requirement to act improperly. ***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 his own contract terms and update his 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:*** cases in respect of 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, he can cease to act. If this is because the client has made a decision against his 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 his solicitor then the retainer may be set aside.	
Required to pass candidates must refer to consequence of wrongful termination e.g: ***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 until the end.	Up to 2 marks
Any other relevant points cited e.g:	Up to 4 marks

Termination by client: At any time and for any reason. Candidates may briefly compare termination by a solicitor 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. ***Pool v Pool [1889] 58 LJP 67:*** Automatic termination. In this case the matter deals with the death of the client. The solicitor can accept instructions to continue the subject claim on behalf of the estate. ***Yonge v Toynbee [1910] 1 KB 215:*** Automatic termination. This case deals with the situation where the client is declared to not have the mental capacity to give instructions. ***Scott v Fenning [1845] LJ CH 88:*** **This case deals with the** bankruptcy of either solicitor or client. ***Wild v Simpson [1919] 2 KB 544:*** Automatic Termination. In this case the solicitor was imprisoned and unable to perform the retainer. ***Allen Limited v. Fuglers SCCO No 13 of 2003:*** Automatic Termination. In this case the solicitor was struck off as a solicitor. ***Bilkus v Stockler Brunton [2010] 1 WLR 2526:*** Additional Work. 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. ***Examples of reasons:*** Effluxion of time, death, bankruptcy, insanity, where a retainer is unlawful ***SRA Code of Conduct 2016 O(1.1):*** Treat clients fairly. ***SRA Code of Conduct 2016 O(1.3):*** In deciding to terminate instructions you must comply with the law and code. ***SRA Code of Conduct 2016 O(1.5):*** Provide competent and timely service. ***SRA Code of Conduct 2016 IB (1.7):*** Consider ceasing to act if you can't act in the client's best interest. ***SRA Code of Conduct 2016 IB (1.10):*** Where you cease to act, advise the client of their possible options for pursuing the matter. ***SRA Code of Conduct 2016 IB (1.26):*** not complied with the outcome if solicitor ceases to act for a client without good reason and without providing reasonable notice ***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. ***Section 65(2) Solicitors Act 1974:*** In non-CFA cases the solicitor's statutory right to charge payments on account in contentious	

business often makes the issue of the nature of the retainer academic. ***Standard terms and conditions:*** means that the issue of non-payment is usually dealt with expressly in the retainer.	

Question 3:	Distinguish between novation and assignment and explain why these concepts are important when determining how a pre-LASPO CFA has been transferred.

Total Marks Attainable Fail = 0-4.9 Pass = 5+ Merit = 6+ Distinction = 7+	10
Indicative Content	**Marks**
Required (assignment should be distinguished from novation e.g): ***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. (Two parties, in writing, by deed, same agreement, client not involved but can accept/reject, benefit and burden must pass). ***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. (Tri party agreement, client involved, different agreement, only benefit passes).	Up to 5 marks A pass must include the demonstration that candidates understand the distinction between novation and assignment.
Credit the identification of the key priority for transferring a CFA/a CFA being assigned e.g: ***Section 27 Access to Justice Act 1999:*** amended section 58 CLSA 1990 to allow for recovery of success fee. ***Section 29 Access to Justice Act 1999:*** includes a similar provision to allow for recovery of ATE insurance premiums. ***Section 44 of the Legal Aid, Sentencing & Punishment of Offenders Act 2012:*** abolished recovery of success fees. ***Section 46 of Legal Aid, Sentencing & Punishment of Offenders Act 2012:*** abolished recovery of ATE premiums. ***CPR 48.2(1)(a):*** If the CFA is dated after 1 April 2013 then the success fee will not be recoverable from the losing party unless it relates to a matter that falls under the following exceptions: insolvency related cases; publication and privacy proceedings; and mesothelioma cases.	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.

Candidates should refer to additional authority 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 he 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. ***Davies v Jones [2009]:*** re-iterated that the burden of a contract cannot be assigned. ***Jones v Spire Healthcare [2015]:*** At first instance, it was found that 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. ***Jones v Spire Healthcare [2016]:*** On appeal, 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.	Up to 4 marks To achieve a merit or distinction, candidates will refer to several decisions made by the courts on how the statutory provisions operate.

Question 4:	Explain the provisions contained within sections 59-65 of the Arbitration Act 1996.
Total Marks Attainable Fail = 0-7.4 Pass = 7.5+ Merit = 9+ Distinction = 10.5+	15
Indicative Content	**Marks**
Required: ***Sections 59-65 of the Arbitration Act 1996:*** These sections set out the rules in relation to costs of arbitration.	5 marks To achieve a pass candidates should describe the provisions within

Section 59 of the Arbitration Act 1996: Costs of the arbitration. ***Section 60 of the Arbitration Act 1996:*** Agreement to pay costs in any event. ***Section 61 of the Arbitration Act 1996:*** Award of costs. ***Section 62 of the Arbitration Act 1996:*** Effect of agreement or award about costs. ***Section 63 of the Arbitration Act 1996:*** The recoverable costs of the arbitration. ***Section 64 of the Arbitration Act 1996:*** Recoverable fees and expenses of arbitrators. ***Section 65 of the Arbitration Act 1996:*** Power to limit recoverable costs.	the question, albeit in brief.
Credit any points advanced on the framework of the assessment procedure under the Arbitration Act 1996 e.g: ***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 and 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 with section 63 of the Act. ***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. ***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. ***Section 63(3) of the Arbitration Act 1996:*** the arbitrator must 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. Challenges to an award are possible, which would also go to the court. Section 67	12 marks For a mark higher than a pass, candidates should include more detail about each of the sections demonstrating a holistic understanding of the legislation.

(as to jurisdiction), section 68 (serious irregularity), and section 69 (point of law). ***Sections 63(4) and (5) of the Arbitration Act 1996:*** 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. ***An award:*** is effectively a final order and, under section 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. ***Section 28 (2) of the Arbitration Act 1996:*** if a party applies to the court to consider the fees, the court may make any adjustments it sees fit.	

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

Question 5:	You work as a costs lawyer for a costs firm based in Liverpool. You have been approached by Mr Daniel Rancher, solicitor in the firm of, Mundsters LLP, to advise on a file of papers and the firm's right to seek payment of its bills. The file relates to a commercial client, Carrie's Carriages Limited. Mr Rancher has advised you that Carrie's Carriages Limited has been a client for a number of years and, until recently, there had been no issues with the payment of bills. However, the company has become very slow to pay the last few bills and has raised what he considers to be nit-picking points to delay payment. In the latest matter where there have been problems recovering fees from Carrie's Carriages Limited, proceedings were issued in the substantive claim. You have noted that this was in accordance with the express authority of the client. There has now been a stay in those proceedings to allow time for the parties to try to reach a settlement. You have been asked to advise Mr Rancher on the firm's right to seek payment of its bills, particularly in respect of this latest matter. You have not had sight of the full file of papers, but have been forwarded a number of bills headed 'on account of costs' which are signed and have been sent via first class post. Prepare the **body** of an advice to Mr Rancher setting out the right of the firm to seek payment of its bills through the courts and of any potential action that may be taken by Carrie's Carriages Limited.

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.
Pass	10+	Candidates will produce an answer which addresses MOST of the following points: Definitions and salient points in respect of interim bills, natural break, final bills/interim statute bills and gross sum bills. It is likely that candidates will have considered some relevant authority. It is likely candidates will have identified that the scenario is a personal injury matter and therefore contentious. Candidates will demonstrate a good depth of knowledge of the subject (i.e. a good understanding of the different types of bill and the effect of the same in respect of the rights of the firm and the client) with good application and some analysis having regard to the facts, although candidates may demonstrate some areas of weakness.
Merit	12+	An answer which includes ALL the requirements for a pass (as set out above) PLUS candidates will demonstrate a very good depth of knowledge of the subject (i.e. a very good understanding of the different types of bill and the effect of the same in respect of the rights of the firm and the client) with very good application and some analysis having regard to the facts. Candidates are likely to observe that, in this scenario, they are told there are no natural breaks although it was clear that the firm had agreed with the client they would deliver interim bills. Candidates may discuss and critically analyse why, for example, an interim invoice on account may be rendered and the advantages of the same – e.g. it may not be the final quantification of all the work included in it, it would simply show the minimum charges to date and it therefore avoids the risk of limiting any between the parties costs recoverable. Most views expressed by candidates should be supported by relevant authority including case authority.
Distinction	14+	An answer which includes ALL the requirements for a pass and merit (as set out above) PLUS 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 right of the firm to seek payment of the bills through the courts as well as identifying any potential action that may be taken. 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.

Fail = 0-9.9
Pass = 10+
Merit = 12+
Distinction = 14+

Indicative Content	Marks
Required: ***There are two kinds of interim bill:*** interim invoices on account and interim statute bills; the difference between them is crucial. Depending on what sort of interim bill has been sent out, a lawyer may be able to: sue the client on such bills (and not just the final bill) or seek a different amount from the client at the end of the case for the period that the interim bill covers. ***Interim invoices on account:*** are merely requests for money on account of work undertaken. They must be for a reasonable sum. If these have been rendered, a solicitor will be able to seek a different amount from the client at the end of the case for the period that the interim bill covers. A solicitor cannot enforce them and a client cannot request an assessment of them. ***An interim statute bill:*** is an invoice which is fully compliant with the requirements of section 69(2) of the Solicitor's Act 1974 (signed and delivered). A solicitor can enforce them and a client can request an	Up to 7 marks To pass, candidates must distinguish between the types of invoice/bill.

assessment of them. Interim statute bills are full and final for the work which they cover (i.e. no additional sums/adjustment for further work can be requested from the client later). ***Final statute bills:*** are the same as interim statute bills, but rendered upon the termination of the contract of retainer rather than at an interim stage. Statute bills can be either "gross sum" bills or detailed. ***A gross sum bill:*** will simply contain the total to be paid to the lawyer, without any breakdown of the figure.	
Any other relevant point to describe interim bills/invoices on account (credit any of the following and/or any other relevant point): ***Section 65(2) of the Solicitors Act 1974:*** a solicitor may seek a payment on account in respect of any contentious business. If the request is for a reasonable amount and the client does not pay then there is good cause to terminate. ***Turner & Co v O Palomo SA [2000]:*** if the client refuses to pay an interim invoice on account then the solicitor's remedy is to terminate the contract of retainer and render a final statute bill. 5 bills rendered during the course of the litigation had been headed 'on account of charges and disbursements incurred or to be incurred' could not be construed as final or statute bills. The time for assessment would not begin to run until a final bill had been rendered and served. ***At the conclusion of a matter:*** the solicitor should render a final invoice, containing the required statutory information and taking into account the payments made to that date. ***Rule 17 of the SRA Account Rules 2011:*** interim invoices on account must be restricted to costs incurred to ensure compliance with the Solicitor Accounts Rules 2011. Once a bill has been rendered, solicitors would be entitled to treat money that may previously have been client money as money belonging to the office so this will impact money held on account and money received once the bill has been rendered (Rule 17.4 of the SRA Account Rules 2011).	Up to 6 marks
Any other relevant point to describe interim/final statute bills (credit any of the following and/or any other relevant point): ***Contents of a statute bill:*** a statute bill will specify the period of work covered and will describe the work done, as well as complying with section 69(2) of the Solicitors Act 1974. ***Kingstons Solicitors v Reiss Solicitors [2014]:*** this was held not to amount to a statute bill. A bill must be drafted in such a way as to be regarded as a demand for payment. ***Carter-Ruck v Mireskandari [2011]:*** an interim statute bill with insufficient information may not be considered an interim statute bill, but may be deemed to be a request for payment on account. ***Entire contracts and natural breaks:*** a retainer is deemed to be an entire contract and, as such, an interim statute bill cannot be rendered before the	Up to 7 marks

end of the contract, other than in contentious work where it can be rendered by agreement or at a natural break. ***Davidsons v Jones-Fenleigh [1980]:*** lawyers are entitled to require a bill to be treated as a completely self-contained bill of costs to date; they must make it clear to their clients, either expressly or by implication, that this is the purpose of sending the bill for that amount at that time. Where a client pays a bill in its entirety without question, it is not difficult to infer that the bill is to be treated as a complete self-contained bill of costs to date. ***Abedi v Penningtons (a firm) [2000]:*** agreement to interim statute bills could be both inferred by the client's behaviour and from the express agreement. ***Re Romer v Haslam [1893]:*** not entitled to payment because the solicitors had never asked for payment of any of their bills; they had simply asked for and received payments on account. ***Wilson v William Sturges & Co (a firm) [2006]:*** the bill delivered at the end of the first stage of proceedings was held to be a statute bill. This was despite the fact the court held the bill to be 20% in excess of the proper amount. The solicitors insisting on it being paid before proceeding further did not terminate the retainer and disentitle the solicitors to the reasonable costs. ***Section 69(1) of the Solicitor's Act 1974:*** no action shall be brought to recover any costs due to a solicitor before the expiration of one month from the date on which a statute bill is delivered; a solicitor may also issue proceedings to recover the sums owed in that bill.	
Any other relevant point to describe final statute bills/Gross sum bills (credit any of the following and/or any other relevant point): ***Section 64 (1) of the Solicitors Act 1974:*** in respect of contentious business provides that a bill may be, at the option of the solicitor, either a bill containing detailed items or a gross sum bill. ***Section*** *64(2) of the Solicitors Act 1974:* if a gross sum bill is delivered then, within 3 months, the party charged with the bill may require the solicitor to deliver a detailed bill. This must be done before the solicitor issues proceedings to recover costs. ***Detailed bill following gross sum:*** the gross sum bill is no longer effective and the detailed bill can therefore be for a different sum than the original bill.	Up to 3 marks

Question 6:	You are a costs lawyer working in-house for a firm of solicitors in Birmingham. The firm specialises in personal injury matters, but a regular client, Jemma Hargrieves, has asked her solicitor, Michael Colman, for some advice in respect of a potential claim for disability discrimination suffered by her seven-year-old daughter, Poppy. Jemma believes that Balderdash Primary School discriminated against Poppy in the admissions process and when

	making arrangements for deciding who will get a place in the school because Poppy has cerebral palsy. Jemma had advised Mr Colman that, recently at a dinner party, she was warned by a family friend against making a claim because of the potential costs consequences. Jemma therefore would like advice on the power of lower tribunals to make an order for costs and in what circumstances they may be likely to make an order that she pays the costs. Mr Colman does not consider himself to have sufficient knowledge to advise Ms Hargrieves. However, he knows that you have had experience of such matters and has asked you to assist. Prepare the body of an email to Ms Hargrieves setting out the rules in the lower tier tribunals in respect of costs and specifically when a costs order may be made against a claimant.
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.
Pass	10+	An answer which addresses MOST of the following points: This matter is a matter before a first tier tribunal (Health, Education and Social Care Chamber), it is not one of the first tier tribunals that cannot make orders for costs, the framework of provisions in the Tribunals, Courts and Enforcement Act 2007 and the relevant rules specific to this tribunal Tribunal Procedure (First-Tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008. Candidates are also likely to have explored wasted costs orders. Candidates will demonstrate a good depth of knowledge of the subject with good application and some analysis having regard to the facts, although candidates may demonstrate some areas of weakness.
Merit	12+	An answer which includes ALL the requirements for a pass (as set out above) PLUS candidates will demonstrate a very good depth of knowledge of the subject (i.e. a very good understanding of the framework for assessment) with very good application and some analysis having regard to the facts. Candidates are likely to observe that, in this scenario, that, whilst the tribunal does have jurisdiction to make orders for costs, that they will only be made where conduct leads to the making of such an order. Most views expressed by candidates should be supported by relevant authority and/or case law.
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 when a costs order may be made and the provisions around such an order. 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.

Fail = 0-9.9
Pass = 10+
Merit = 12+
Distinction = 14+

Indicative Content:	**Marks**
Required: Candidates must demonstrate knowledge of the tribunal structure and its jurisdiction to make costs orders (candidates are not required to list all chambers).	Up to 6 marks To achieve a pass, candidates must demonstrate an

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; and Property Chamber. ***2 first tier tribunals***: have no power to award costs at all (Social Entitlement Chamber and the War Pensions and Armed Forces Compensation Chamber). The 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 Compensation Chamber) Rules 2008; Tribunal Procedure (First Tier Tribunal) (Social Entitlement Chamber) Rules 2008.	understanding of the make-up of the first tier tribunals and provide an outline as to which tribunals may award costs and which tribunals may not.
Candidate should refer to legislative framework to describe the jurisdiction e.g: ***Tribunals, Courts and Enforcement Act 2007:*** Tribunals governed by TCEA 2007, but each chamber is 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 and 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 7 marks
Any other relevant point to describe the procedure e.g: ***Section 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 the 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:*** section 10 Tribunal Procedure (First-Tier Tribunal) (Social Entitlement Chamber) Rules 2008; and section 10 of the Tribunal Procedure (First-Tier Tribunal) (War Pensions & Armed Forces Compensation Chamber) Rules 2008.	Up to 7 marks 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.

Wasted Costs orders: *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. ***Unreasonable Conduct:*** defined in the other chamber specific First Tier Rules where applicable e.g. rule 10 (1) of the Tribunal Procedure (First Tier Tribunal) Health, Education and Social Care Chamber) Rules 2008.	
Credit any application to the scenario e.g: ***Identify:*** Tribunal Procedure (First Tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008 ***Advise:*** Jemma may be at risk of a wasted costs order or an order for unreasonable conduct.	Up to 3 marks To achieve more than a pass, candidates must not simply cite law, but should show how the law operates in this scenario.

Question 7:	Harrisons Ltd is a small high street firm which has a franchise with the Legal Aid Agency and provides civil legal aid. You are a trainee costs lawyer in the firm and have been passed the file of Aarif Abbasi, the claimant in an action for unlawful detention. Mr Abbasi was represented by Lynnette Harrison, a senior partner at the firm. The claimant was an Afghan national who, following the death of his parents when he was 4 years old, was taken to Iran by his grandmother. He came to the UK in 2012 when he was 15 years old and claimed asylum, as a child, following the death of his grandmother. He had no memory of living in Afghanistan. The claimant's asylum claim was refused on the 14 November 2013 by the First Tier Tribunal with permission to appeal also being refused. Although it was noted that the claimant would be at real risk of serious harm in Kabul and that removal would breach the UK's obligations under Article 15C Qualification Directive, the judge found that the claimant should be returned to Iran. Permission to appeal was initially refused. Ultimately, however, after protracted proceedings, leave to remain was granted. Following the outcome of the proceedings, Mr Abbasi commenced an action for unlawful detention against the Secretary of State for the Home Department. Judicial review proceedings were issued on the 10 February 2017 and the matter concluded with an apology with "no order as to costs". The matter was funded by the LAA (Certificate Number HOP697078A-A2) and the certificate was issued on the 1 February 2017. There is a notice to show cause on the file covering a period of two weeks in relation to a reassessment of means. The certificate appears to remain live. The profit costs recorded on the file total £10,370 exclusive of VAT. You have been asked to consider the next steps, how the costs in the claim should be assessed and the impact of the notice to show cause. Prepare a **summary** of the next steps, how the costs in the claim should be assessed and the impact of the notice to show cause.	
Total Marks Attainable Fail = 0-9.9 Pass = 10+ Merit = 12+		20

Distinction = 14+	

Fail	up to 9.9	An answer which deals with the basic requirements of the question, but in dealing with those requirements candidates only do so superficially and do 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. The answer will be weak in its presentation of points and its application of the law to the facts.
Pass	10+	An answer which addresses MOST of the following points: Legal Representation, Certificates, Embargos and Assessment. Candidates should identify the value the case and how it should be assessed.
Merit	12+	An answer which includes ALL the requirements for a pass (as set out above) PLUS candidates will demonstrate a very good depth of knowledge of the subject (i.e. a very good understanding of the operation of legal aid funding) with very good application and some analysis having regard to the facts. Candidates should identify that, in this scenario, this is a post-LASPO funding certificate and note the position with 'at risk' work. Most views expressed by candidates should be supported by relevant authority and/or case law.
Distinction	14+	An answer which includes ALL the requirements for a pass (as set out above) PLUS candidates' answers should demonstrate a deep and detailed knowledge of law in this area and an ability to deal confidently with relevant principles. Candidates should be able to show critical assessment and capacity for independent thought on the topic of costs and case management. Work should be written to an exceptionally high standard taking into consideration that it is written in exam conditions.

Indicative Content	**Marks**
Required: ***Legal Representation:*** Differentiated from controlled work (work under a legal help). This is work undertaken under a public funding certificate. ***CLS App 8:*** Certificates will have a costs limit and detail the scope of the work that may be undertaken. To amend either of these, an application must be made to the LAA. These applications may now be made on CCMS. ***Embargo (Notice to Show Cause):*** A "show cause" notice puts an embargo on the legal aid certificate until clients are able to "show cause" why it should not be revoked or discharged. ***Embargo (Show Cause) Under Funding Code:*** Embargo placed on certificate and no work can be claimed for the date that the show cause was in place even if the show cause is subsequently removed. ***Embargo Show Cause under LASPO (intention to withdraw a determination):*** If show cause is removed, then funding will be continuous (as though the show cause was never placed on the certificate). If the 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".	Up to 6 marks To pass, candidates are required to demonstrate general knowledge of public funding certificates and embargos.
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	Up to 7 marks To pass, candidates are required to demonstrate general

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 between the parties 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. ***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 note; ☑ Expert's invoices and disbursement vouchers; and ☑ any other supporting evidence required (e.g. copies of court orders made for DNA and drug testing).	knowledge of the assessment procedures.
Any other relevant points cited on certificates e.g: ***Certificates that are current:*** are described as live, but certificates may be "discharged" or "revoked" because, for example, clients are	Up to 2 marks

no longer eligible or have failed to respond to a LAA request for further information or the legal representative has recommended that the certificate should be discharged or revoked. ***The LAA will communicate with the client:*** if it is thinking of discharging or revoking a certificate and a client can object by writing to the LAA within a given period of time, usually 14 days. If a certificate is discharged, the client does not have to pay for all the work the legal representative has done up to the date the certificate was discharged. However, they will no longer be entitled to legal aid for their case, though they can reapply. Note, however, that the statutory charge applies. The client won't be pursued by the LAA for costs incurred as they would if the certificate was revoked. The statutory charge can arise at a later date if the client proceeds under a different funding arrangement and is successful in recovering any money.	
Any other relevant points cited on Embargos (Notice to Show Cause) e.g: ***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 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, the work can 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. ***No Instructions from client:*** If the client has failed to provide instructions to his solicitor, a show cause should be placed on the certificate giving the client the opportunity to contact his solicitor, 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	**Up to 5 marks**

certificate. The claim should be returned to the solicitor pending resolution of the show cause. ***Means re-assessment:*** 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 may have drawn comparisons between recoverable costs depending on where costs are assessed 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. ***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. ***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.	Up to 3 marks

Question 8:	You are a costs lawyer working for a costs firm in Manchester. You have been instructed by Felicity Smith, a solicitor who works for Tower LLP, a large firm in Blackpool which conducts a large volume of slip and trip cases under Conditional Fee Agreements (CFAs). The firm has been approached by a small high street firm, Shinjin and Colt LLP, which is a local two-partner firm. The firm is facing financial hardship because of the problems with the economy and the recent extension of the fixed costs regime. The work undertaken by that firm is mainly claimant based and the firm has a number of claimants who signed CFAs in 2012 which provided for a success fee (of up to 100% of base costs) to be recovered from the losing party if they were successful. It has been mooted that Borris Colt may become a partner in Tower LLP. Mr Colt has assured Felicity that he has provisionally spoken to a number of clients who have agreed for Tower LLP to carry on with their compensation claims. Felicity is aware that the provisions of Part 2 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) came into force on the 1 April 2013. She is also very aware of recent case law developments on

	issues around the transfer of CFAs and, as such, she has requested that you provide her with an advice as to the transfer of CFAs in such circumstances. Prepare the **body** of a letter to Mrs Smith providing her with an advice as to the transfer of CFAs from one firm to another, having particular regard to the specific circumstances referred to.
Total Marks Attainable	20

Fail	up to 9.9	An answer which deals with the basic requirements of the question, but in dealing with this 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. The answer will be weak in its presentation of points and its application of the law to the facts.
Pass	10+	An answer which addresses MOST of the following points: Candidates must provide an explanation of assignment and novation; circumstances when a transfer may be required; key priority for a transfer. Some key case law may be included, but this may not be specifically applied or only superficially.
Merit	12+	An answer which includes ALL the requirements for a pass (as set out above) PLUS candidates will demonstrate a very good depth of knowledge of the subject (i.e. a very good understanding of the transfer of CFAs) with very good application and some analysis having regard to the facts. Candidates should identify that, in this scenario, the reason for the transfer is because of the firm closing its doors and, also, that clients have expressly agreed to follow their solicitor. Most views expressed by candidates should be supported by relevant authority and/or case law.
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. All views expressed by candidates should be supported by relevant authority and/or case law throughout. Candidates should be able to show critical assessment and capacity for independent thought on the topics. Work should be written to an exceptionally high standard taking into consideration that it is written in exam conditions.

Fail = 0-9.9
Pass = 10+
Merit = 12+
Distinction = 14+

Indicative Content	**Marks**
Required: ***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 5 marks In order to achieve a pass, candidates must provide an explanation of assignment and novation.

Any relevant points on when a CFA will be enforceable e.g: ***Assignment:*** Two parties. In writing, by deed, same agreement, client not involved but can accept/reject, benefit and burden must pass. ***Novation:*** Tri party agreement, client involved, different agreement, only benefit passes. ***Circumstances when a CFA may need to be transferred:*** 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 ***Key priority for transferring a CFA:*** 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.	Up to 6 marks To achieve a merit or distinction, candidates should not simply cite the relevant rules and principles but must show an ability to apply the rules to the scenario.
Credit any other relevant points 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. ***Davies v Jones [2009]:*** re-iterated that the burden of a contract cannot be assigned. ***Jones v Spire Healthcare 2015:*** at first instance 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. ***Jones v Spire Healthcare [2016]:*** on appeal, the case of Jenkins was determined to be 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.	Up to 12 marks To achieve more than a pass, candidates must not simply cite law but should show a greater depth to their knowledge base.

Question 9:	You are a costs lawyer considering setting up a firm with your best friend from university who is a solicitor specialising in clinical negligence. Initially, you plan to draft the budgets and bills on the files of the clients your firm takes on; but, ultimately, you wish to expand your business and take external instructions from other firms in relation to their costs needs. You are drafting a business proposal for the bank to consider in order that you may secure a loan to set up the firm. Within that business proposal you have been asked to consider the risks and regulations associated with going into practice. Specifically, you need to adequately demonstrate that the firm will be alert to, and take responsibility for, managing risks as to its delivery of legal services. You therefore need to write a summary to include in your business proposal in respect of the money laundering regulations that you must comply with and set out your understanding of the role of compliance officers. Prepare the **summary** that you will include in your business proposal on the aspects detailed above.

Total Marks Attainable	20

Fail	up to 9.9	An answer which deals with the basic requirements of the question, but 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. 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 candidates have any understanding of the legislative framework governing money laundering and the role of a COFA, or any view expressed will be unsupported by evidence or authority.
Pass	10+	An answer which addresses MOST of the following points: An outline of the Money Laundering Regulations 2007, the requirement for firms to have a COFA, the principal money laundering offences, due diligence, organised crime, role of a COFA and compliance with the Solicitors Account Rules.
Merit	12+	An answer which includes ALL the requirements for a pass (as set out above) PLUS candidates will demonstrate a very good depth of knowledge of the subject (i.e. a very good understanding of the operation of the money laundering regulations and the accounts rules) with very good application and some analysis having regard to the facts. Most views expressed by candidates should be supported by relevant authority and/or case law.
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 candidates should be supported by relevant authority and/or case law throughout. Candidates should be able to show critical assessment and capacity for independent thought on the topics. Work should be written to an exceptionally high standard taking into consideration that it is written in exam conditions.

Fail = 0-9.9
Pass = 10+
Merit = 12+
Distinction = 14+

Indicative Content	**Marks**
Demonstrate an understanding of the role of compliance officers: ***Requirement:*** The Legal Services Act 2007, under Part 2 of Schedule 11 requires ABSs to appoint a Head of Finance and	Up to 4 marks

Administration (HOFA), but there is no corresponding statutory requirement for solicitor's practices. ***Section 92(1) 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.* ***The primary legislation and SRA Handbook differ on the title of the COFA role:*** but this does not affect its substance. The SRA, under rule 8.5(d) of the SRA Authorisation Rules 2011, has changed the title from Head of Finance and Administration (HOFA) to Compliance Officer for Finance and Administration (COFA). This rule requires that all SRA authorised firms have a COFA. ***The Compliance Officer for Finance and Administration (COFA) has three core functions/duties:*** internal implementation of compliance systems; external reporting of failures to the SRA; maintaining records of compliance failures.	
Required: ***Legal Guidance, Proceeds Of Crime Act 2002 Part 7 - Money Laundering Offences:*** Money laundering is "the process by which criminal proceeds are sanitised to disguise their illicit origins". ***Due Diligence and Money Laundering:*** The Money Laundering Regulations 2007 (the 'Regulations') require the following: carry out client due diligence, so that it is known who is being dealt with, conduct ongoing monitoring, so that it is known what it is that is being asked to be done and so the warning signs of money laundering can be spotted. ***Money Laundering Regulations 2007, the Proceeds of Crime Act 2002 and the Terrorism Act 2000:*** Regulated law firms are required by law to: ☑ have a nominated money laundering reporting officer (MLRO); ☑ report suspicious activity that they think may indicate money laundering both internally and to the MLRO and externally to the NCA; ☑ have a system clearly setting out the requirements for making a disclosure of suspicious activity under the Proceeds of Crime Act 2002 and the Terrorism Act 2000; ☑ undertake customer due diligence to verify identity of clients, source of funds, beneficial owners and the nature of business transactions; ☑ keep records of customer due diligence undertaken; ☑ ensure staff are properly trained. ***All recognised and licensed bodies must nominate a compliance officer for legal practice (COLP) and a compliance officer for***	Up to 4 marks To achieve a pass, an explanation should be given on the need for firms to comply with the rules on the requirements of a COFA and the rules relating to money laundering.

finance and administration (COFA): it is rule 8.5(d) of the SRA Authorisation Rules that requires all firms to have a COFA.	
Candidates should also refer to the money laundering offences and defences e.g: ***Rule 14.5 of the SRA Accounts Rules 2011:*** Only using the client account to hold client funds for a legal transaction. ***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 provisions 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 it can be shown that the offence occurred due to one of the following: ☑ the act or default of another; or ☑ reliance on information given by another. 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	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

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.	
May also raise the following points on conduct e.g: ***Rule 1.2 of the SRA Account Rules 2011:*** requires that a firm and its 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	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

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 rule 6.1. ***Weston v The Law Society (1998) The Times, July 15:*** the Court of Appeal confirmed that it was appropriate to strike off a lawyer when no dishonesty was alleged. 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.	