June 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:	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 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 2 marks A pass must include reference to the CLSB code of conduct.
CLSB Practising Rules: There is no mention of the CLs handling client money in the CLSB Practising Rules. ***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 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:*** Has undertaken a lot of research on client money and has even proposed reducing the number of firms entitled to hold client money.	Up to 4 marks 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:	Write a summary discussing the nature of a lien, considering any relevant law, and outline how a solicitor with unpaid fees may have a potential lien over a client's property.
Total Marks Attainable Fail = 0-4.9 Pass = 5+ Merit = 6+ Distinction = 7+	10
Indicative Content	**Marks**
Required: A lien is a right to keep possession of property belonging to another person until a debt owed by that person is discharged. ***A solicitor with unpaid fees has a potential lien over the client's property in one of two ways:*** Common law lien or a statutory lien under section 73 of the Solicitors Act 1974	Up to 3 marks To pass a response must include an explanation of what a lien is
May also raise some of the following points: ***A Retaining Lien:*** The right for a solicitor to retain a client's property (e.g file of papers) in their possession until he is paid his outstanding fees. ***Leo Abse and Cohen v Evan G Jones Builders Limited [1984]:*** Where Eveleigh LJ explained that a solicitor who is discharged by clients in a case is entitled to hold the papers until his fees are paid. ***Loescher v Dean [1950]:*** Sets out that as long as the property over which the lien is to be exercised comes into the solicitor's possession through his position, then he has a lien over that property until his fees are discharged. ***Withers LLP v Rybak [2011]:*** Case law on retaining liens. Confirms that the definition of property covers monies held in client account. ***Withers LLP v Langbar [2011]:*** Monies held in client account can only be covered by a lien where those monies are not held for a specific purpose, but are held generally. ***A preserving Lien:*** The right to ask a court to order that personal property recovered under a judgment, which the solicitor has helped to obtain, stand as security for his costs. ***Halvanon Insurance Co Ltd v Central Reinsurance Corporation and another [1988]:*** In an application for a preserving lien the solicitors will need to show: ☑ they were instructed by the party;	Up to 8 marks To achieve more than a pass candidates must not simply cite the examples but should show a holistic understanding of the operation of liens.

☑ 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. ***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.	

Question 3:	Explain why third party funding is a relatively new concept in litigation funding within England and Wales.
Total Marks Attainable Fail = 0-4.9 Pass = 5+ Merit = 6+ Distinction = 7+	10
Indicative Content	**Marks**
Required: ***Third party funding:*** is an alternative method of litigation funding where a commercial funder with no connection to the proceedings will pay some or all of the costs of the case in return for a share of any sum of money awarded in damages if the case is won. ***British Cash & Parcel Conveyors v Lamson. Store Service Co* [1908]:** Maintenance is said to be the procurement, by direct or indirect financial assistance, of another person to institute, or carry on or defend the 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'.	Up to 3 marks A pass must include the demonstration that the candidate understands what third party funding, maintenance and champerty are even if they are not explicitly defined.

Credit the chronological developments e.g: ***Seear v Lawson (1880):*** Third party funding is permitted in matters arising out of insolvencies. ***Section 13 of the Criminal Law Act 1967:*** Abolished the criminal offences and torts of champerty and maintenance. ***Section 14 of the Criminal Law Act 1967:*** Agreements may still be unenforceable on the grounds of public policy. ***Section 58 of the Courts and Legal Services Act 1990:*** Contingency Fee Agreements, by way of Conditional Fee Agreements (CFAs), expressly permitted by statute. ***Factortame (2002):*** Arrangement for third party funders to cover the costs of forensic accountants was held to be lawful. The claimants remained in control of the conduct of the litigation. ***Akin v Borchard Lines Ltd & Ors (2005):*** The court gave tacit approval to this type of litigation funding. ***Merchant bridge & Co Ltd & Another v Safron General Partner 1 Ltd (2011):*** Third party funders could be liable to the full extent of the claimant's costs. ***JEB Recoveries LLP v Linstock (2015):*** The judge held that, given the current climate and changing attitudes to litigation funding, the agreement did not offend public policy.	Up to 5 marks To achieve more than a pass, candidates must not simply cite law but should show a greater depth to their knowledge base.
Candidate should refer to factors that have resulted/supported the change in stance e.g: ***Policy:*** change in approach by both the legislative and judiciary. ***Restrictions:*** on champerty and maintenance still remain. ***Courts still:*** have to decide on the facts of each litigation funding agreement whether the contract is unenforceable on the grounds of public policy. ***Agreements are structured:*** so the client retains full control over the way in which the action is conducted. ***Non-recoverability of success fees and premiums:*** litigation funding by a third party may be a more attractive option in some cases. ***Resources:*** claimants will have the resources to be represented by highly experienced solicitors and counsel. ***Voluntary Code:*** Association of Litigation Funders code	Up to 5 marks To achieve a merit or distinction, candidates will refer to several factors that have resulted/supported the change.

Question 4:	Explain, with reference to appropriate authority, what jurisdiction first tier tribunals have 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 and its jurisdiction to make costs orders (candidates are not required to list all chambers). 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.	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 tribunals may not make an order for costs.
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 6 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	Up to 7 marks To achieve a merit or distinction candidates must

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. ***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.	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: 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.	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.

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

Question 5:	You work in-house for a firm of solicitors and are considering the file of Aamirah Dawud, which was a commercial litigation matter. Harry Hall had conduct of the file and proceedings were issued in accordance with the express authority of the client. Mr Hall has requested your advice on the right to seek payment of his bills. You were forwarded the full file of papers and have access to the case management system and ledgers. When perusing the file, you concluded that it was clear that the firm had agreed with the client that they would deliver interim bills. There were no natural breaks in the litigation, but the firm did in fact deliver monthly bills each purporting to be a final bill for the period in question (or an interim statute bill). At first, the client paid those invoices regularly, but then stopped, leaving two bills unpaid and one bill partially paid. The client had since alleged that she had been overcharged and was

	querying a gross sum bill. Write the body of an advice to Mr Hall setting out the right of the firm to seek payment of the bills through the courts and of any potential action that may be taken by Aamirah Dawud.

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 the candidate 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 therfore 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	Up to 8 marks To pass candidates must distinguish between the types

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 s 69(2) of the Solicitor's Act 1974 (signed and delivered). A solicitor can enforce them and a client can request an 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.	of invoice/bill.
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.	Up to 8 marks

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 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.	Up to 3 marks

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.	

Question 6:	Aleah Basu is an assistant solicitor who has been invited to observe a number of arbitration hearings. In time, it is hoped she will become a professional arbitrator. She is relatively inexperienced in costs in arbitration proceedings and would like your assistance with some queries. During her first observation of arbitration, Mrs Basu observed an award being made in favour of Dig It Ltd following its action against Rooftop Gardens Ltd. The order was that Rooftop Gardens Ltd pay Dig It Ltd's costs with the direction that the arbitrator would undertake the assessment of those costs. During her second observation, the unsuccessful party, Souths Ltd, advised the arbitrator that he is not able to assess the costs himself and must refer the matter to court. Souths Ltd is represented, not by an expensive legal team, but by the CEO, Mr Nick South. Whilst he could have afforded legal representation, he decided to appear in person. This could have been a factor in Souths Ltd not succeeding, but that factor is to be left aside. The matter of some concern is that Mr South shouted to the successful party's legal representative, Miss Wilson representing Wests Ltd, that her client would "never see a penny of the money anyway!" Prepare the **body** of a memo to Mrs Basu explaining how the provisions of the Arbitration Act 1996 govern the assessment of costs, when a matter must be referred to the court and the rules on enforcement in an arbitration matter.
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: Costs should be determined by agreement or arbitrator, assessment as arbitrator 'sees fit', 3 categories of costs, matter may be referred to the court, enforcement would be through the usual methods under the CPR. Candidates will demonstrate a good depth of knowledge of the subject (i.e. a good understanding of the framework for assessment of costs and the relationship between arbitration proceedings and the courts) with good application and some analysis having regard to the facts, although candidat 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 we are told there are three main points that need addressing (assessment, court and enforcement) and candidates will show a clear knowledge base as to how the particular sections of the Arbitration Act relate to those points . Candidates may discuss and critically analyse why, for example, the assessment of costs by the court is very unlikely i.e that the starting point will be the parties agreement followed by the potential assessment by the arbitrator. 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 the right to refer the matter to the court and the difficulties faced with enforcing 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: ***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 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 (as to jurisdiction), section 68 (serious irregularity), and section 69 (point of law). ***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.	Up to 5 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.
Credit any points advanced on the framework of the assessment procedure under the Arbitration Act 1996 e.g: ***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) of the Arbitration Act 1996:*** mean that, where costs are determined by the arbitratori 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.	
Credit any points advanced on when the matter may go to court e.g: ***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 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). ***Section 70(5) of the Arbitration Act 1996:*** where, on an application or appeal, the court feels 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:*** 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. **Sections 67-69 of the Arbitration Act 1996:** cover the situations where an award may be challenged: ***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.	Up to 6 marks

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 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.	
Any other relevant points cited on enforcement e.g: ***Section 66(2) and (3) of the Arbitration Act 1996:*** where the court gives leave, judgment 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. ***Refusal of Leave:*** 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 *Middlemiss & Gould v Hartlepool Corp* [1972] 1 W.L.R. 1643; [1973] 1 All E.R. 172). ***CPR 62.18:*** sets out the procedure to enforce an award - 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.	Up to 3 marks

Question 7:	Boris Thompson represented Mohamed Nabulsi in an action for unlawful detention against the Secretary of State for the Home Department. Judicial review proceedings were issued on 6 December 2016. Boris has now left the firm and the matter has been taken over by Debbie Gill. Debbie has telephoned you and asked you for some advice on the file. Whilst on the telephone, Debbie ran through the following chronology of events with you: 2 December 2016 — Exercised delegated functions 23 December 2016 — Embargo on certificate 29 December 2016 — Funding reinstated 30 December 2016 — Hearing 30 December 2016 — App 8 completed and forwarded to LAA, request for costs limitation to be increased. 2 January 2017 — Amended certificate received (costs limitation £10,000). 9 January 2017 — Hearing, Defendant failed to attend. Directions for a further hearing were made. Judge directed that that there be a hybrid court with a senior Upper Tribunal Judge and an Administrative Court Judge presiding over the matter. Judge ordered that the transfer to Upper Tribunal be stayed pending the forthcoming hearing and skeleton arguments be prepared.

	11 January 2017	Authority sought from the LAA for the instruction of an expert and Queen's Counsel (due to the increasing complexities of the claim and the wider implications of this matter setting a new point of law).
	18 January 2017	Prior authority granted by LAA
	29 February 2017	App 8 completed and forwarded to LAA, request for costs limitation to be increased.
	19 March 2017	Amended certificate received (costs limitation £20,000).
	Boris told Debbie before he left that he believed a Very High Costs Case Plan would be needed on this file.	
	Provide the **body** of a memo to Mrs Gill, in appropriate business language, on the circumstances surrounding the public funding certificate and advice on Very High Costs Case Plans.	

Total Marks Attainable Fail = 0-9.9 Pass = 10+ Merit = 12+ Distinction = 14+	20

Fail	up to 9.9	An answer which deals with the basic requirements of the question, but in dealing with those requirements only does so superficially and does not address, as a minimum, all the criteria expected of a pass grade (set out in full below). The answer will only demonstrate an awareness of some of the more obvious issues. 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 Special Case Work. Candidates should identify the value the case is expected to exceed and why a Case Plan may be needed in this case.
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 with few, if any, grammatical errors or spelling mistakes etc.

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	Up to 10 marks To pass, candidates are required to demonstrate general knowledge of public

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". ***Special Case Work:*** Is work on a special case e.g. a case likely to exceed £25,000, a multi-party action or an appeal in the Supreme Court. It is referred to the Very High Cost Case Team or Special Cases Unit. ***Case Plan:*** Costs are agreed with the LAA in advance on a budget (Case Plan) and the final costs are assessed by the LAA and never by the court. This was originally introduced under the Funding Code with the inception of the Community Legal Service Fund and commenced in September 2000.	funding certificates and special case work.
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 no longer eligible or have failed to respond to a Legal Aid Agency (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.	Up to 2 marks
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)	**Up to 5 marks**

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 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.	
Any other relevant points cited on special case work e.g: ***Part 6 of The Civil Legal Aid (Procedures) Regulations "Special Case Work":*** sets out the extra conditions and controls for very high cost civil cases. These also set out the procedure for funding these cases. ***Once case plan approved:*** the costs limitation on the certificate will be increased to reflect the cost of the approved stage. ***Start of Contract:*** the contract starts when the HCC team first limits the certificate to the work set out in the Key Stage of the Costed Case Plan.	Up to 5 marks

In Force: It stays in force while the certificate is in force. Once the contract has started, the case will be managed through a series of Key Stages until it ends. Each Key Stage will state the cost of the stage broken down into disbursements, profit costs and advocacy costs. ***Application:*** In this situation, the need for a case plan has been identified when a certificate for Investigative Representation or Full Representation has already been issued and therefore the application should be made on CIVAPP8.	

Question 8:	You are a costs lawyer working for Tiara Costs Ltd. You have received instructions from a local High Street firm, which conducts a large volume of slip and trip cases under Conditional Fee Agreements (CFAs). The firm recently settled a claim for £18,000 against Higham District Council after Miss Iceni Gotto injured her left wrist and knee after she tripped on a tree root that had grown up through the path at Higham Country Park, on 14 July 2016. Miss Gotto was a self-employed fitness instructor and the accident had a severe impact on her business. Higham District Council has instructed a costs lawyer to deal with the matter and Points of Dispute upon your bill have been served. Amongst other disputes, these seek to challenge the validity of the CFA. Your instructing solicitor, Mrs Rashpal Shinjin, is extremely nervous about this particular point because of prior experience. Mrs Shinjin had previously had a CFA ruled invalid at her former firm in 2012. The repercussions for that firm and her career were significant as she had used the same CFA on twelve other files. As such, Mrs Shinjin has requested that you draft a note upon the circumstances in which this CFA might be ruled invalid and unenforceable.
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. There will be little evidence that candidates have any understanding of the legislative framework governing a CFA, or any view expressed will be unsupported by evidence or authority.
Pass	10+	An answer which addresses MOST of the following points: Candidates should refer to CLSA 1990 and LASPO 2012 as the governing law. Candidates will have outlined most of the regulatory framework of a CFA and the requirements as to form. Candidates should have distinguished between a CFA that allows for a success fee and one that does not. Candidates may also have discussed the Post LASPO position in relation to CFAs.
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 CFAs) with very good application and some analysis having regard to the facts. Candidates should identify that IN THIS SCENARIO this is a post LASPO CFA.

		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 with few, if any, grammatical errors or spelling mistakes etc.

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

Indicative Content	**Marks**
Required: ***Conditional Fee Agreements:*** introduced by Courts and Legal Services Act 1990 are contingency agreements or 'no win no fee agreements'. ***Section 58(1) of the Courts and Legal Services Act 1990 provides:*** A conditional fee agreement which satisfies all of the conditions applicable to it by virtue of this section shall not be unenforceable by reason only of its being a conditional fee agreement; but (subject to subsection (5)) any other conditional fee agreement shall be unenforceable.	Up to 2 marks To pass, candidates must describe what a CFA is.
Any relevant points on when a CFA will be enforceable e.g: ***Section 58(3)(a) of the Courts and Legal Services Act 1990:*** it must be in writing. ***Adams v London Improved Motor Coach Builders [1921]:*** retainer may be oral. ***Hailey v Assurance Mutuelle Des Motards (unreported), March 2015:*** highlighted the importance of wording a CFA correctly. ***Section 58(3)(b) of the Courts and Legal Services Act 1990:*** it must not relate to proceedings which cannot be the subject of an enforceable conditional fee agreement. These are found in section 58A and include criminal proceedings and family proceedings. ***Section 58(3)(c) of the Courts and Legal Services Act 1990:*** it must comply with such requirements (if any) as may be prescribed by the Lord Chancellor. This requires that CFAs comply with any regulations/delegated legislation ***Woods v Chaleff [2002]:*** it was held that since the Conditional Fee Agreements Regulations 1995 laid down express provisions that had to be complied with, any failure to comply with those provisions made the agreement unenforceable, even if the breaches were merely "technical".	Up to 8 marks A merit or distinction answer will phrase the statutory framework so as to address the question and set out that if the framework is not complied with the agreement would be unenforceable

Section 58(4) of the Courts and Legal Services Act 1990: provides that any CFAs that provide for a success fee must relate to proceedings of a description specified by order made by the Lord Chancellor and state the percentage by which the amount of the fees which would be payable if it were not a CFA is to be increased. That percentage must not exceed the percentage specified in relation to the description of proceedings to which the agreement relates as specified by order made by the Lord Chancellor.	
Credit any other relevant points cited e.g: ***Recoverability of CFA success fees and ATE premiums*** ***Access to Justice Act 1999:*** amended section 58 CLSA 1990 to allow for recovery of success fee (section 27 AJA 1999), ATE insurance premiums (section 29), but Legal Aid, Sentencing & Punishment of Offenders Act 2012 abolished recovery of success fees (section 44) and ATE premiums (section 46). ***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 (CPR 48.2(1)(a)): ☑ insolvency related cases; ☑ publication and privacy proceedings; and ☑ mesothelioma cases. If the CFA is post 1 April 2013, then the success fee can be recovered from the client if the 'win' under the terms of the CFA is triggered. ***Law Society Model:*** reference may have been made to this and there may have been some discussion around this.	Up to 8 marks
Credit any discussion on post LASPO CFA issues re enforceability e.g: ***Transferring a CFA:*** It is possible to 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. 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. *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. In *Jones v Spire Healthcare [2015]* (first instance decision) the first CFA had deemed to be at an end and	Up to 6 marks To achieve more than a pass candidates must not simply cite law but should show a greater depth to their knowledge base

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]* it was found that 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 found to be validly assigned. It was suggested at the time that the decision was likely to be appealed further.

Children Attaining Majority: If a minor remains a minor, then there is no problem and the success fee and base costs are recoverable from the losing party under a pre-Jackson CFA. Once the minor achieves his or her majority, the role of the Litigation Friend falls away and, on the face of it, so does the Conditional Fee Agreement signed by the Litigation Friend. There will therefore be potential problems where a CFA was signed prior to 1 April 2013 and the minor achieved majority on or after that date. The questions that arise are:

- ☑ Whether costs incurred under the original CFA are recoverable?
- ☑ Whether there are issues regarding the success fee?
- ☑ Is there a lawful retainer in place in relation to pre-majority work?

In cases involving minors achieving their majority the courts are likely to hold that costs, including the recoverable success fee, are recoverable under the original Conditional Fee Agreement and thus no problem is caused by a child being represented under a pre-1 April 2013 CFA attaining majority. In any case where proceedings had not been issued when the Litigation Friend was appointed then the principles set out in *Dunn v Mici* [2008] EWHC 90115 (Costs) apply. In this case the Supreme Court Costs Office worked hard to preserve the validity of a CFA. The court was not dealing with success fee recoverability, but that does not affect the rationale of the decision; if the original Conditional Fee Agreement entered in to by the minor is valid, then costs under that original agreement, including the success fee, are recoverable. If, unusually, proceedings had been issued before the CFA was signed, then there would be a Litigation Friend, who would doubtless have signed the CFA. However, that does not prevent the Litigation Friend from also being the agent of the principal, the principal being the minor.

Death: Under the Law Society's Model Conditions, the CFA contract automatically ends upon death of the client. ***Contracts Entered with a Minor:*** Any CFA entered with a minor (whether by himself or through a "next friend" as agent) would bind the minor on the attainment of majority at 18. Thus, any CFA would continue after the minor reached 18. ***Entered with a "Next Friend":*** As opposed to as agent for the child, then it is automatically terminated once the child reaches majority. Arguably, CFA may however be 'assigned' ***Next friend signing the contract on behalf of the Minor:*** Where the next friend has signed the contract on behalf of the minor, but the contract is in the minor's name then the minor is the client. ***Protected person gains capacity:*** There is no automatic termination of the next friend's status unless there is a court order to that effect.	

Question 9:	You are a costs lawyer working in-house for a firm of solicitors in Doncaster, Magnolia Legal LLP. The costs department works closely with the accounts department and you have been asked to assist in putting together a training session. The head of the accounts department, Mr Jez Yohan, is aware that lots of clients have tried to pay invoices in cash and that the reception staff have been unsure how to manage queries from those clients. You have been tasked with writing some training notes on the money laundering regulations. Mr Yohan 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 Yohan 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 Yohan therefore wishes to advise new starters of the role of the Compliance Officers for Finance and Administration (COFAs). Provide the **body** of the training notes to Mr Yohan on the particular aspects he wishes to cover.
Total Marks Attainable	20

Fail	up to 9.9	An answer which deals with the basic requirements of the question, but in dealing with 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, organized 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 with few, if any, grammatical errors or spelling mistakes etc.

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

Indicative Content	**Marks**
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 finance and administration (COFA):*** it is rule 8.5(d) of the SRA Authorisation Rules that requires all firms to have a COFA.	Up to 6 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.
Candidates should also refer to the money laundering offences and defences e.g:	Up to 8 marks

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 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 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	To achieve a merit or distinction candidates should make reference to the risk firms and individuals face if due diligence is not followed

☑ 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 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.	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

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. ***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.	