June 2018: 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 how and why the CLSB prohibit 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**
Required a discussion on the protection of the public and minimising risks: ***Section 1 LSA 07:*** 8 regulatory objectives. ***Section 20 LSA 07:*** Approved regulators. ACL is named as the approved regulator but the CLSB have the delegated functions. ***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 include a discussion as to what client money is, 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. ***CLSB Practising Rules:*** There is no mention of the CLs 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. ***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	Up to 3 marks To achieve more than a pass candidates must not simply cite the rules but should show a deeper understanding of the rules including an appreciation (even if not explicitly stated) of the requirement to act in the best interest of the client.

Rule 12.1 (b) of the SRA Account Rules: "office money" - money which belongs to you or your firm. ***CILEx Account Rules:*** define client money as money beneficially owned by anyone other than the Authorised Entity.	

Question 2:	Explain, with reference to the relevant authority, the circumstances when a retainer may be terminated.
Total Marks Attainable Fail = 0-4.9 Pass = 5+ Merit = 6+ Distinction = 7+	10
Indicative Content	**Marks**
Required (a description of a retainer): ***Underwood, Son v Piper Lewis [1894]:*** The law must imply that the contract of the solicitor upon a retainer in the action is an entire contract to conduct the action till the end. ***J H Milner & Son v Percy Bilton Ltd [1966]:*** A retainer serves as the right to payment & is fundamental to the recovery of costs where no retainer, no entitlement to charge.	Up to 2 marks To pass a response must include an explanation of what a retainer is
Candidate should refer to the form and content of a retainer e.g: ***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 ***Section 58(3) of the Courts and Legal Services Act 1990:*** Some agreements must follow specific formalities, such as a CFA which needs to be in writing. ***Section 13 of the Supply of Goods and Services Act 1982:*** A retainer is a contract for legal service between a lawyer and client and there is an implied term that the service will be carried out with satisfactory care and skill ***The SRA Code of Conduct:*** has the effect of implying terms into the retainer between solicitor and client (O(1.1) clients will be treated fairly, O(1.3) in deciding to terminate instructions solicitors will comply with the law and code and O(1.5) solicitors will provide competent and timely service. ***IB (1.26):*** implies a term into a retainer that where a solicitor ceases to act for a client they must have good reason and provide reasonable notice	Up to 4 marks To pass a response must include an explanation of the nature and form of a retainer.

Candidate should refer to what amounts to good reason e.g: ***Solicitors Act 1974 Section 65 (1)&(2):*** Client's failure to make a payment on account of costs. ***Wong v Vizards (a firm) [1997]:*** Solicitor declined to act at a hearing unless substantial payment made on account of a disputed bill. Amount claimed by the solicitor was unreasonable, they had wrongfully terminated the retainer on non- payment and were not entitled to any payment at all for the work done in preparing for the hearing. ***Warmingtons v McMurray [1936] 2 All ER 745:*** 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. ***Hilton v Barker Booth & Eastwood [2005]:*** Conflict of interest/Professional embarrassment ***Re Jones [1896]:*** 1 Ch 222 Suspected duress or undue influence. If the Solicitor is not confident the client is giving instructions freely they can cease to act. ***Richard Buxton (Solicitors) v Huw Llewelyn Paul Mills-Owens & Law Society (intervener) (Second Appeal)[2010]:*** Requirement to act improperly	Up to 4 marks To achieve more than a pass candidates must not simply cite the examples but should show a holistic understanding of how the law operates in relation to the termination of a retainer.
May also raise some of the following points on the implications of wrongful termination by a solicitor: ***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.	Up to 2 marks

Question 3:	Contingency fee agreements are unenforceable. Critically discuss this statement.
Total Marks Attainable Fail = 0-4.9 Pass = 5+ Merit = 6+ Distinction = 7+	10
Indicative Content	**Marks**
Required (an explanation of the concept of champerty): ***A contingency fee agreement:*** is an agreement whereby a client does not have to pay until an event or trigger occurs. The agreement will dictate the circumstances of payment.	Up to 3 marks A pass must include the demonstration that the candidate understands what

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'.	contingency fees, maintenance and champerty are even if they are not explicitly defined.
Credit the chronological developments (and the change in stance to such funding arrangements) e.g: ***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. ***Section 58(2) of the Courts and Legal Services Act 1990:*** Defines a CFA as being a contract for litigation or advocacy services where payment is contingent on the outcome. ***Section 46 LASPO 2012:*** Introduced the second contingency fee agreement permitted by statute in England and Wales (DBA).	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.
Candidates may refer to the court's position in relation to third party funding e.g: ***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. ***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 3 marks To achieve a merit or distinction, candidates will refer to the court's position in relation to third party funding.
Candidate may 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 agreements based on champerty and maintenance still remain.	Up to 2 marks To achieve a distinction, candidates will provide some commentary on the change.

Courts still: have to decide on the facts of each litigation funding agreement whether the contract is unenforceable on the grounds of public policy.	

Question 4:	Critically discuss the jurisdiction first tier tribunals have to make a costs order.
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 3 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.	Up to 5 marks

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	
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. ***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.	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.
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 are instructed by Mr Donovan of Donovan and Dawson Solicitors. On the 30 July 2015, the firm entered into a retainer with Mr and Mrs

	Carr to act for them in litigation concerning a right of way. Mr Donovan had conduct of the matter. He submitted 38 bills to Mr and Mrs Carr; 27 for solicitor's fees and 11 for disbursements only. Mr and Mrs Carr terminated the retainer with Donovan and Dawson Solicitors and instructed alternative solicitors in October 2017. Mr and Mrs Carr failed to pay Donovan and Dawson Solicitors' final four invoices in the sum of £13,096.22, the last of which was rendered on 22 January 2018. Write the body of an advice to Mr Donovan 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 Mr and Mrs Carr.		
Total Marks Attainable		20	
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.		Up to 2 marks To pass candidates must identify that the question concerns interim invoices and set out the relevance regarding enforcement	
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 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.		Up to 5 marks To pass candidates must distinguish between the types 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):		Up to 6 marks	

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 2017:*** 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 2017).	
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 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.	Up to 9 marks

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. ***Bari v Rosen (trading as RA Rosen & Co Solicitors) [2012]:*** Interim statute bills are final bills in respect of the work they cover in that there can be no subsequent adjustment in the light of the outcome of the business. ***Richard Slade and Company v Boodia and Boodia [2017]:*** The QBD, in an appeal from the SCCO, upheld Master James' finding that interim statute bills must include disbursements. ***Sprey v Rawlison Butler LLP [2018]:*** High Court ruled monthly bills under discounted CFA were not statute bills but interim invoices. CFA provided that claimant would pay 40% of firm's normal rates if lost the claim and if won, he would pay the normal rates plus a 50% success fee. A statute bill cannot be amended and the CFA provided that the 40% invoices were liable to be changed later on. ***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 2 marks

Question 6:	Dereck Blythe is an arbitrator who has just made an award in a matter involving Mr Fendon and Mr Fendon's professional indemnity insurers, DFT. Mr Fendon was the subject of civil liability proceedings. This led to a dispute between Mr Fendon and DFT in relation to the extent of his policy coverage. The dispute about coverage was referred to ad hoc arbitration seated in London. In an award dated 17 May 2018, Dereck Blythe found that the civil liability claim was not covered by Mr Fendon's policy and ordered that Mr Fendon reimburse DFT for the civil liability claim defence costs which it had already paid. Mr Blythe also awarded costs against Mr Fendon in relation to the arbitration on the basis that there was no reason to depart from the principle that costs follow the event. This was made despite neither DFT nor Mr Fendon having made submissions in relation to arbitration costs. Mr Fendon has now approached your firm requesting advice in relation to the power of Mr Blythe to make such an order. Prepare the body of a letter of advice setting out 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 candidate 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 are likely to observe that in this scenario there may be grounds for the court to review the decision, for example because of procedural irregularity. They may then identify that if reasons for the decision have not been included on the award the arbitrator may ask that the arbitrator gives reasons before they will consider any challenge to the award. 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. ***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	Up to 8 marks

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. ***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.	Up to 6 marks

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:	Mr Rupert Brown, a recently qualified solicitor who has been tasked with taking over the caseload of a recently retired colleague, has instructed you. Mr Brown works in the civil department at Rothams LLP, a high street firm in Basingstoke. Unfortunately, it appears that Mr Brown has inherited a number of legal aid matters and his experience of such matters is extremely limited. Accordingly, Mr Brown has requested your advice and, specifically, a brief description of the implications of each of the following: a) A revocation of a substantive certificate. The certificate was issued to Mrs Khan who apparently concealed income from a rental property when advising the Legal Aid Agency of her means. b) A notice to show cause issued by the Legal Aid Agency on the 9 April 2016 in respect of a funding certificate issued to Mr Borris Nelson, a claimant in a clinical negligence matter. The defendants had evidently been petitioning to the LAA to discharge the funding certificate for some time. c) A discharge of a funding certificate following completion of an action brought on behalf of Jessica Frightwell (d.o.b 05.07.2016). The certificate had been live since 7 February 2017 and the notice of discharge is dated 11 February 2018. Provide the **body** of a letter of advice on the particular circumstances on the files and any action that should be taken.	
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, revocation and discharge of certificates. Candidates should identify the relevant issues in each case and deal with the circumstances in their advice.
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 that 2 of the certificates are post LASPO funding certificates and one scenario does not specify. Candidates should 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. Work should be written to an exceptionally high standard with few, if any, grammatical errors or spelling mistakes etc.

Indicative Content	**Marks**
Required: ***The Legal Aid Agency:*** will grant legal aid, and issue a funding certificate. The certificate is known as the substantive certificate provided all relevant paperwork and documentation have been provided. ***Legal Representation:*** Differentiated from controlled work (work under a legal help). This is work undertaken under a public funding certificate. ***Certificates will:*** have a costs limit and detail the scope of the work that may be undertaken. ***Certificates that are current are described as live:*** but certificates may be "discharged" or "revoked" because for example, clients are no longer eligible or have failed to respond to a Legal Aid Agency request for further information or the legal representative has recommended that the certificate should be discharged or revoked.	Up to 6 marks To pass, candidates are required to demonstrate general knowledge of public funding certificates and special case work.
Any other relevant points cited in relation to scenario 1 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.	Up to 6 marks To achieve more than a pass, candidates are required to demonstrate an ability to apply the law to the scenario set rather than simply

When a certificate is revoked: the client will become personally liable for the costs. The client may have to pay for the work their legal representative has done so far under the certificate. If a certificate is discharged or revoked a legal representative cannot carry out any further work under the certificate. ***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. ***No longer be entitled to legal aid for their case:*** though they can reapply. Note, however, that the statutory charge applies.	state the relevant points
Any other relevant points discussed in relation to scenario 2 e.g: ***Schedule 1 of LASPO:*** The restrictive nature of legal aid in relation to clinical negligence matters ***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". ***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.	Up to 8 marks To achieve more than a pass, candidates are required to demonstrate an ability to apply the law to the scenario set rather than simply state the relevant points.

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 discussed in relation to scenario 3 e.g: ***Either by the firm or the LAA:*** identify that discharge can be invoked by either the firm or the LAA ***The LAA will communicate with the client:*** if it is thinking of discharging a certificate a client can object by writing to the LAA within a given period of time, usually 14 days. ***Consequence of discharge:*** 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. ***The relationship between the Provider and the client ceases upon notice of Discharge:*** upon receipt of this notification it might be reasonable to write a closing letter to the client advising them of this fact. The content should be minimal and paid as a routine letter. ***Discharge/Withdrawal for no claim on the fund:*** The process for discharging certificates for no claim on the fund is to discharge the certificate and process a nil final [£0] bill to correctly close the matter. This is not applicable in this scenario. ***Discharge/Withdrawal on Contribution Cases:*** Where the client is paying contributions on a case the certificate should be manually discharged to the date of the final work on the case, excluding billing. This ensures that the client receives notification that the	Up to 7 marks To achieve more than a pass, candidates are required to demonstrate an ability to apply the law to the scenario set rather than simply state the relevant points

certificate has been discharged and they can cease paying contributions. Cases where contributions have been paid in should be referred to a refund caseworker post bill paying for consideration.	

Question 8:	You work in-house for a firm of solicitors, Kaur and Martin Solicitors, and are considering the file of Lesley Leeson. The file is a personal injury matter. On 2 December 2012, Lesley Leeson instructed Jarvis and Jarvis LLP, to pursue a claim for damages on her behalf. Lesley had tripped and fallen whilst attending the defendant's supermarket on 6 July 2012. She was heavily pregnant at the time and suffered damage to her ligaments as a result of her fall. The cause of the accident was an area of defective pavement within the control of the defendant. On the date of instruction Ms Leeson entered into a CFA with Jarvis and Jarvis LLP under which she, among other things, agreed to pay a 100% success fee in the event that she won her case (which subsequently she duly did). A letter of claim was sent on 1 February 2013 and liability was admitted on 17 May 2013. However, during the course of the retainer, Jarvis and Jarvis LLP decided that personal injury litigation was no longer economically viable as a result of the LASPO reforms. Jarvis and Jarvis LLP wrote to the claimant on 12 March 2013 explaining that, due to the reforms, they believed that only "the biggest personal injury firms will be able to continue to operate" and proposed to transfer her case to a larger and more specialist firm, Kaur and Martin Solicitors, unless the claimant instructed them otherwise. The claimant was content with the transfer and communicated the same to Jarvis and Jarvis LLP. The Firm transferred all their personal injury clients to Kaur and Martin Solicitors on 28 April 2013. Detailed assessment is now underway and it is the claimant's position that she is entitled to recover her costs under the CFA dated 2 December 2012, including the success fee, from the defendant. This is because that CFA has been assigned to Kaur and Martin Solicitors. The defendant is resisting paying the success fee and contends that a new CFA was entered into on 28 April 2013 under which the claimant would only be entitled to her base costs. Draft a note upon the circumstances in which the claimant may be able to recover the success fee under the CFA dated 2 December 2012.
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 must provide an explanation of assignment and novation; circumstances when a transfer may be required; key priority for a transfer. Candidates should refer to CLSA 1990 and LASPO 2012 as the governing law. Candidates MAY have outlined most of the regulatory framework of a CFA and the requirements as to form. 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 is ceasing to undertake that particular type of 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 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 4 marks In order to achieve a pass, candidates must provide an explanation of assignment and novation.
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 5 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 points relevant to the scenario in relation to CFAs e.g ***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:*** 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. ***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.	Up to 5 marks
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	Up to 10 marks To achieve more than a pass, candidates must not simply cite law but should show a greater depth to their knowledge base.

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. ***Budana v Leeds Teaching Hospitals NHS Trust [2017]:*** It is possible to transfer a CFA.	

Question 9:	You are a costs lawyer who heads the costs and accounts department at Sidney Weaver LLP, a large high street firm in Saint Albans. The role requires you to work closely with the COFA and principals at the firm. You have been asked to provide information in relation to the management of client money for the family department. The family department have always dealt with only legally aided work but are now expanding to deal with private work. This is because an opportunity was identified by the head of the family department, Mr Horting, when a rival firm closed its local office so that it could focus on its London based clients. Mr Horting has therefore identified a training need. The department needs a guidance note producing that covers the operation of client accounts, including when withdrawals may be made. Additionally, the department also need a refresher on who is responsible within the firm for ensuring compliance with the SRA Accounts Rules. Provide the body of the guidance notes to Mr Horting 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 the role of a COFA, or the rules in relation to client accounts.
Pass	10+	An answer which addresses MOST of the following points: An outline of the the role of a COFA, the role of Principals, the requirements in the SRA Handbook, the requirement for firms to have a COFA and compliance with the solicitors account rules, in particular those go verning the use of client money.
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: ***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. ***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 5 marks To achieve a pass, an explanation should be given as to what is client money and the need for firms to comply with the rules/the requirements of a COFA.
Candidates should refer to the purpose of the rules and need to manage and supervise the activity within the firm e.g: ***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 1.2 of the SRA Account Rules 2017:*** requires that a firm and its employees must comply with the principles set out in the SRA Handbook (or Code of Conduct) and specifically the outcomes in chapter 7 of the Handbook in relation to the effective financial management of the firm.	Up to 3 marks To achieve a pass, an explanation should be given on the purpose of the rules and an outline of the framework to help ensure compliance.
Candidates should discuss the use of client account including the rules on withdrawing money e.g:	Up to 8 marks

Distinguish between office and client: Rule 12 divides money into two categories, namely: Client money and Office money. ***Rule 14.1 of the SRA Accounts Rules 2017:*** ***Client money must without delay be paid into a client account, and must be held in a client account, except when the rules provide to the contrary.*** ***Rule 14.3 of the SRA Accounts Rules 2017:*** *Client money must be returned to the client (or other person on whose behalf the money is held) promptly, as soon as there is no longer any proper reason to retain those funds.* ***Rule 14.5 of the SRA Accounts Rules 2017:*** Only using the client account to hold client funds for a legal transaction. ***Rule 20.8 of the SRA Account Rules 2017:*** Money held for a particular client (or trust) must not be used for payments for another client. ***Rule 20.9 of the SRA Account Rules 2017:*** client account should never be overdrawn except in the 2 listed circumstances; ***Transferring from Client to Office:*** involves the bank moving money from one bank account to another. It occurs when the solicitor instructs the bank to transfer money from the client bank account to the office bank account, or from the office bank account to the client bank account. The solicitor must make entries on the firm's internal cash accounts and client ledger to reflect the fact that the money has actually moved between bank accounts. ***Rule 17.2 of the SRA Accounts Rules 2017:*** Firms must first send a bill before money is transferred from client to office.	
Candidates should discuss the roles of COFAs and Principals e.g: ***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 8 marks To achieve more than a pass, an explanation should be given for the need for firms to comply with the rules on the requirements of a COFA and the role of principals.

recognised body must report material breaches, of the accounts rules to the SRA as soon as reasonably practicable. ***Regulation 4.8(e) of the SRA Practising Regulations:*** The COFA of a recognised sole practitioner has a duty to report material breaches. ***All COFAs must:*** record any breaches and make those records available to the SRA on request. (See also outcomes 10.3 and 10.4 of Chapter 10 of the SRA Code of Conduct in relation to the general duty to report serious financial difficulty or serious misconduct.) ***All the principals in a firm must:*** ensure compliance with the rules by the principals themselves and by everyone employed in the firm. This duty also extends to the directors of a recognised body, or a licensed body which is a company, or to the members of a recognised body or license body which is an LLP. It also extends to that COFA of a firm (whether a manager or non- manager). This duty is found in the rule 6.1. ***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.	