



June 2018

**Level 3 National in
20168K – Dispute Solving in Civil
Law**

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What is a grade boundary?

A grade boundary is where we set the level of achievement required to obtain a certain grade for the externally assessed unit. We set grade boundaries for each grade, at Distinction, Merit and Pass.

Setting grade boundaries

When we set grade boundaries, we look at the performance of every learner who took the external assessment. When we can see the full picture of performance, our experts are then able to decide where best to place the grade boundaries – this means that they decide what the lowest possible mark is for a particular grade.

When our experts set the grade boundaries, they make sure that learners receive grades which reflect their ability. Awarding grade boundaries is conducted to ensure learners achieve the grade they deserve to achieve, irrespective of variation in the external assessment.

Variations in external assessments

Each external assessment we set asks different questions and may assess different parts of the unit content outlined in the specification. It would be unfair to learners if we set the same grade boundaries for each assessment, because then it would not take accessibility into account.

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Unit 1 : Dispute Solving in Civil Law

Grade	Unclassified	Level 3			
		N	P	M	D
Boundary Mark	0	10	19	29	40

Introduction

This was the inaugural external assessment for Unit 1 of the new BTEC Level 3 Applied Law. Unit 1 forms one of two mandatory units for the Certificate and one of three mandatory units for the Extended Certificate. It contributes 50% of the available marks required for the Certificate.

Since this is a new form of assessment for Level 3 Applied Law, there is nothing to reflect on in terms of changes from any previous form of external assessment or past papers which could be used as guidance. However, Pearson have made a variety of support materials available. These include the specification, delivery guides, on-line and face-to-face training sessions, two sets of specimen assessment materials and a set of exemplar responses with accompanying examiner commentaries.

In Unit 1 candidates learn about the civil justice system including the civil courts, the track system and appeals as well as alternative methods of dispute resolution and sources of both funding and advice. They will also study precedent and the law of negligence. Learners will also develop legal skills in research and will use these skills to investigate the way in which precedent might apply to negligence in a given situation by constructing liability and considering potential remedies. Lastly, candidates will learn how to reference legal sources and how to communicate professionally with colleagues and clients.

Unit 1 is assessed twice yearly in January and May/June. The assessment is based on two key events. Firstly, the pre-release of the 'Part A' materials followed a week later by further information and the assessment itself in 'Part B'. The Part A pre-release materials contain legal resources which act as a research catalyst ahead of the Part B assessment. Learners have up to 6 hours during the period between Part A and Part B to undertake their research and produce (individually) up to two sides of A4 notes of legal authorities considered relevant in the light of the Part A information. Candidates will be allowed to take these notes into the Part B controlled assessment.

The Part B assessment is a 1 hour and 30 minute session taken under supervised and controlled conditions (please refer to the Administrative Support Guide) during a timetabled session on a date set by Pearson. The assessment consists of two discrete tasks each worth 30 marks. Learners should be encouraged to split their time equally between the two tasks. Task 1 consists of a file note and Task 2 is a client letter. In both tasks the 30 marks are distributed across the same four assessment *foci*:

- AO1** Selection and understanding of legal principles relevant to context (8)
- AO2** Application of legal principles and research to data provided (8)
- AO3** Analysis and evaluation of legal authorities, principles and concepts (10)
- AO4** Presentation and structure (4)

During the Part B controlled assessment, learners are required to produce their work using a computer. The two tasks along with a candidate declaration of authenticity are then submitted along with a learner record sheet and a centre register. Most centres provided these materials in hard copy with a few submitting their work electronically. A minority of centres submitted work

without including signed authentication sheets and/or learner record sheets.

Introduction to the Overall Performance of the Unit

There are some limitations to the comments that can be made about the performance of the paper since, being new, it has no 'history' or any realistic comparators among existing BTEC qualifications. However, there was a pleasingly buoyant first entry of just under 2,000 candidates who performed extremely well. The following should be noted:

There was clear evidence of:

- High levels of preparation demonstrating detailed and thorough subject knowledge
- A good grasp of the legal lexicon demonstrated through appropriate use of technical language and terminology
- Wide ranging and accurate citation of appropriate and relevant legal authorities
- Centres who had prepared candidates well through clear use of both Pearson training, the SAMs and exemplar materials with accompanying commentaries
- Good use of thoughtful and meticulous preparatory notes
- A good grasp of the assessment methodology and few rubric errors

There were few timing issues as the overwhelming majority of candidates seemed to finish both tasks in the allotted time. However, there was evidence that some candidates distributed their time poorly between the two tasks - usually to the detriment of the client letter.

The standard of work in general was very good and would withstand close scrutiny by comparison to any other level 3 Law qualification.

Areas requiring improvement include:

- Encouraging learners to be more selective and avoid a 'shotgun' approach. Some candidates were slavishly following a pre-learned list which they followed mechanically. Whilst it may be thorough, it tends to lead to a response where things which need more detail are covered too briefly and a lot of irrelevant material which gains no credit is covered instead
- Not including exhaustive accounts of case facts - this is not necessary and gains no credit unless they have a particular relevance to the point being made
- Making stronger links with the information given in both Part A and Part B.
- Not producing anecdotal and narrative responses which often do little more than 're-tell the story' from a third person perspective
- Failing to draw conclusions - this relates particularly to AO2 but in both tasks.
- Development of AO3 - specific examples to follow
- Remembering that there is a difference between 'listing' and 'explaining' and 'quality' and 'quantity'

There was one very common error which must be addressed. The substantive law element of unit 1 is based on **the law of negligence in English and Welsh Law**. This has two implications which, if misunderstood, can lead to invalid responses:

- Firstly, other areas of tort law are not part of unit 1 and will, therefore, not be assessed within the unit. A number of candidates were drawn into areas such as Occupiers' Liability, vicarious liability and trespass to land - none of which would ever be relevant in the context of the assessment within a unit 1 question.
- Secondly, and much more commonly, precedents from other jurisdictions, whilst interesting or even persuasive, are not binding and should not be treated as such. It is clear that a significant number of candidates, as part of their research, put the terms 'tort', 'negligence' and 'golf' into search engines and then ran with their findings. These included Scottish, Irish, Australian and USA cases. The most common of these was the prolific use of a case called *Mc Phee v James Gordon & Nidry Castle Golf Club (2011)*. This is a case from the Scottish Court of Sessions and has very little relevance - even persuasively. The case was decided under different legal principles and it has twin 'defenders' - one of which was being pursued under the Scottish equivalent of the Occupiers' Liability Act. Unfortunately this didn't stop a significant number of candidates citing it with absolute conviction and authority. There was no credit in such cases although some credit may have been given where it was cited as persuasive only and used in the right context.

Individual Questions

It is worth noting that:

There is no cross-credit between the two assessment tasks. Creditworthy material included in the wrong task is not credited to the other task. This was particularly relevant to two areas of this session:

- Example 1: Confusion between 'causation of damage' and 'damages' led some candidates to give information about damages in the file note not the client letter.
- Example 2: Contributory negligence was often dealt with as a 'damages' issue in the client letter rather than part of the construction of liability in the file note.

It is best to set out the law first and then explain and/or apply it. Some candidates explained all the law in abstract and then summarized the application missing out on a more detailed and forensic approach that would gain higher marks.

Question 1 (File Notes)

Assessment focus: AO1 - Selection and understanding of legal principles relevant to context

Most candidates did very well here. At the top of the mark range was a requirement that learners 'explain' each element of negligence with appropriate supporting authority. As a discriminator for full marks, contributory negligence needed to be included. There were many high scoring scripts.

Duty of care was done particularly well with clear understanding of Caparo, the three-stage test and appropriate supporting authority. Encouraged by the 'breach cases' that appeared in Part A, most learners included a detailed account of the reasonable man test, variations on the objective standard and the factors that can influence the standard of care - all with appropriate supporting authorities. Causation of damage was covered to a similarly high standard.

Helpful tips for future papers:

- Duty of care can be established in a number of ways. Since *Robinson v Chief Constable of West Yorkshire Police* [2018], the preferred approach is to use existing precedents and develop the law incrementally and by analogy. Where the limits of an assessment (i.e. an apparently novel situation with no precedent or relevant statutory authority) do not allow learners to do this, the three stage test from *Caparo* should continue to be used. However, it is never necessary to trace duty back to *Donoghue v Stevenson*
- As above in the introduction, do not use authorities from foreign jurisdictions (so far as law is concerned, this includes Scotland!)
- Do not include exhaustive accounts of the case facts
- Make sure you understand the difference between 'causation of damage' (part of the construction of liability) and 'damages' (the financial 'remedy' claimed by a successful claimant)
- Do not include issues that have no relevance such as the thin-skull (or egg-shell-skull) principle and *res ipsa loquitur*

- Make sure you 'explain' a point explicitly rather than impliedly or not at all:

Candidate Example:

"Breach of duty is based on the reasonable man as set out in Blythe v Birmingham Waterworks ..."

"Breach of duty is based on the reasonable man test which requires the defendant's behavior to fall below that of the reasonable man in the same position as set out in Blythe v Birmingham Waterworks ..."

Comment: It can be seen that the second example 'explains' the test where the first example takes it for granted that the reader understands.

Assessment focus: AO2 - Application of legal principles and research to data provided

Most candidates did well here but there were a range of points worth noting which will improve future performances:

Failing to conclude

Most candidates wisely divided their response into the three key areas of duty, breach and causation. However, despite accurate consideration of how a legal principle might apply to an individual, they then failed to conclude. This was more common within the individual elements of negligence but also occurred in relation to overarching liability in negligence itself. This was most common in breach where some candidates got confused with the standard of care elements.

Choosing the wrong defendant

A significant minority of learners seemed to think that the Golf Club were the defendants rather than Bob. Analysis of liability on this basis was, unfortunately, not creditworthy. Some candidates carried the misunderstanding through all

Candidate Example:

"Bob breached his duty of care by falling below the standard of the reasonable golfer. Bigtown Golf Club did not take adequate precautions to protect Claire by, for example, putting up a fence like they did in Bolton v Stone."

"Bob breached his duty of care by falling below the standard of the reasonable golfer. Bob did not take adequate precautions to protect Claire by, for example, not practicing next to a public footpath (Bolton v Stone)."

Comment: It can be seen that in the second example both issues (the reasonable man test and one of the tests of the standard of care - adequacy of precautions) are applied to Bob whereas in the first example one is applied to Bob and the other to Bigtown Golf Club.

three aspects where some were only confused in one area - usually breach where they applied the tests for breach to both Bob and the golf Club based on which seemed to 'fit best' or bore the closest similarity to the cases they were using.

Made-up speculation

A minority of learners added their own facts and narrative to the details provided. Sometimes these were groundless and sometimes they were speculation. Learners should be discouraged from relying on anything which is not included in Parts A & B as it may lead them to incorrect conclusions.

Candidate Examples:

1. "Bob is a professional golfer and will have to meet the standard of the professional golfer (Bolam v Friern Hospital)"
2. "Since Bob is practicing, he must be a learner and should therefore be compared to the learner golfer (Nettleship v Weston)"
3. "Bob shouted 'fore' as a warning to Claire so he did not breach his duty to her"

Comment: Example 1 is groundless but would otherwise be true; example 2 is speculation and the stated law is incorrect; and example 3 is groundless speculation which is wrong in law anyway

Lack of reliance on the Part A & B materials

There were a number of scripts where learners failed to make links with information provided in the source materials. For example, Part B states that Bob is practicing shots 'close to the path'. This places Bob in fairly clear breach and yet the point was often overlooked.

Not being selective - or a compulsion to go through everything

The point of this assessment is to produce a set of notes for a colleague which indicate what the relevant law is and, for assessment focus AO2, explain how it might apply to the scenario. Too many candidates burdened themselves with rehearsing their way through every aspect of negligence exactly as it appears in the specification (and in the same order). Thus time was spent on irrelevant issues:

- Example 1: Under breach many candidates felt it necessary to run through learners, children, experts and skilled defendants when all that was needed here was to compare Bob to the reasonable golfer.
- Example 2: Again, under breach many candidates felt it necessary to speculate on how all four factors affecting the standard of care might apply. Based on the sources it was reasonably obvious that adequacy of precautions and magnitude of risk would be worth considering but social utility and special characteristics of the claimant probably not.

- Example 3: Without any information to suggest it would be an issue, the egg-shell skull rule is just idle speculation which takes up valuable time.
- Example 4: The doctrine of *res ipsa loquitur* has absolutely no relevance here. Mainly because the cause of the 'accident' would need to be unknown.

Read the source materials (especially Part B) carefully

Information in the sources carries vital clues and needs to be read carefully. For example, Claire ignoring the warning sign was a clear hint towards her being contributorily negligent. This subtle point was used as a full mark discriminator and therefore carried vital marks. However, it was still necessary to apply it correctly - it may have reduced Claire's damages but would not, as some candidates concluded, remove Bob's liability altogether - hence 'contributory'.

Assessment focus: AO3 - Analysis and evaluation of legal authorities, principles and concepts

Due to the nature of the task on this occasion there was relatively little opportunity to score high marks for AO3. The most common opportunities lay in discussing the 'fair, just and reasonable' element of the Caparo test, the social utility aspect within the standard of care and the fairness (or otherwise) of contributory negligence. In particular, candidates might have discussed fairness, social policy and the role of judges, judicial creativity in developing the common law, the need for statutory intervention and reform.

A minority of candidates picked up some marks for comments regarding the fair, just and reasonable element of the Caparo test. The key to scoring higher marks here is in ensuring that candidates can produce balanced discussions with developed points whilst recognizing that the task does not call for a discursive 'essay'. More detailed discussion of this point can be found below in relation to the client letter task. However, an illustration of the difference between short (bald) points, developed points and 'balanced' well-developed points is given below:

Candidate Examples:

POINT (1 mark): "Determining matters of policy should not be left to unelected judges (P)"

DEVELOPED POINT (2 marks): "Determining matters of policy should not be left to unelected judges (P) as, unlike politicians who are voted in, they cannot be held to account for their decisions (DP)"

WELL DEVELOPED POINT (3 marks): "Determining matters of policy should not be left to unelected judges (P) as, unlike politicians who are voted in, they cannot be held to account for their decisions (DP). However, it can be argued that their work as judges equips them with a broad social view and their decisions can still subject to appeals (WDP)"

Assessment focus: AO4 - Presentation and structure

This assessment focus (AO4) relates to the quality of the presentation and structure. It does not involve any assessment (qualitative or quantitative) of the law or its application in either this task or the client letter.

The layout and setting of a file note, being fairly straightforward, meant that the vast majority of candidates scored full marks. Although a lack of headings, sub-headings, paragraphs and bullet points would assist the reader, few candidates were not given full marks due to their absence. Exceptions to full mark scores were generally due to:

- Incomplete responses (due to running out of time or simply abandoning the question)
- Purely anecdotal answers which failed to convey any information required by the task
- Use of English, grammar and/or syntax which failed to convey a coherent message
- Fundamental errors which would convey incorrect, incomplete or incomprehensible information to the reader

Question 2 (Client Letter)

In general the client letters were done to a high standard and scored higher marks than the file note.

Aspects demonstrating good practice:

- As a vocational qualification, there was clear evidence the A4 element of the specification (Legal Skills) demonstrated through the ability to provide appropriate and relevant client advice in the requisite format.
- Letters were confident and knowledgeable providing accurate and reassuring information to the client.

Areas for improvement:

- Some letters could have been better balanced. This was, in some cases, due to timing issues. However, in some instances there was simply far too much information on damages. In these letters the information was often highly technical and too 'legal' with inappropriate and extensive case citation. In other examples there were far too many alternatives offered leaving clients confused and bewildered by the sheer volume of information.
- Some candidates lacked objectivity in their letters. It is understandable that one would, in theory, like to keep the client within the practice. However, it is part of the duty on a lawyer (not to mention part of the task) to point out alternatives and the relative merits and drawbacks of each.

- There was occasional confusion or lack of clarity between sources of advice and funding.

Assessment focus: AO1 - Selection and understanding of legal principles relevant to context

Mostly well written with appropriate detail and balance. For high marks candidates needed to explain something covering three key areas as laid out in the task: damages, funding and alternative sources of advice and/or the civil justice system. The use of authorities may not be appropriate in a client letter although these were credited. Using a wider definition of legal authority allowed this to become the full mark discriminator. Consequently, credit was given for normal legal authorities (usually relevant damages cases), citation of sources of advice such as the web address of a dispute resolution provider and mentions of things like Scott v Avery Clauses and/or the Arbitration Act.

Students appeared to have a better understanding of the content here and therefore seemed more confident in their responses.

Areas for improvement:

- Some letters were over-worked with too much information when considering the audience. A few letters set out a side-and-a-half just on damages. Some of the letters included a huge range of alternative sources of advice and/or funding but often without explaining any of them.
- Be aware of what is being assessed where. Despite having some relevance to the actual damages paid out, the inclusion of the AO1 'law' on contributory negligence was not credited as it is a 'liability' issue in terms of the elements of the specification that are being assessed in each task.
- There seemed to be some confusion between:
 - sources of funding and sources of advice
 - the different forms of ADR
 - what a CFA is, how it works and (sometimes) what it stands for (Conditional Fee Agreement)
 - damages and losses and between general and special damages

The most common reason for students losing marks in the client letter was listing things rather than explaining them:

Candidate Example 1: ADR

LISTED: Claire can use ADR instead of the courts. These include negotiation, mediation, conciliation, arbitration or tribunals. (1 mark)

EXPLAINED: Claire could try ADR instead of the courts. The most common form of ADR is mediation. This is where a neutral third party acts as a go-between and tries to encourage the parties to find some common ground and settle their dispute. It is not legally binding like the courts. (3 marks)

COMMENT: The justification for the difference in marks is that the client, Claire, is left none the wiser in relation the first example whereas in the second example she would have a basic understanding of what mediation is and how it would work for her.

Candidate Example 2: Advice Sources

LISTED: Claire can get advice about her problem from a claims management company, the Citizen's Advice Bureaux, Law Centres, Community Legal Advice Centres, Trades Unions, Free Representation Units, insurance policy helplines and online providers such as the Civil Legal Advice service run by the government. (1 mark)

EXPLAINED: Claire can get advice about her problem from a claims management company. They are very easy to find on the internet and they often advertise on the television as well as having high street offices. A claims manager will assess the case and determine whether you have a case worth pursuing. If you agree to their terms they will then instruct a lawyer to act on your behalf. If you win the case they will make a charge for their services and the remainder will be yours. (3 marks)

COMMENT: Once again, the justification for the difference in marks is that the client, Claire, is able to make an informed decision because of the explanation.

Assessment focus: AO2 - Application of legal principles and research to data provided

Generally this assessment focus (application of relevant law to client's case) was dealt with very well.

Elements of best practice:

- Making strong links between the advice given and the evidence provided in the sources
- Referring to the client specifically by name to underscore the link
- Most candidates managed some accurate advice even if they couldn't cover all the elements required by the task. In relation to:
 - Damages: most learners knew the difference between general and special damages and which applied to which aspect of Claire's losses
 - Funding: most learners recognised the fact that Claire was on low income, that there is no legal aid for PI cases and then advised her

Candidate Example 3: Funding

LISTED: Claire could fund the case herself from her own money. Alternatively, she could get legal aid (if PI cases were covered and she was entitled), use a CFA or get a lawyer to provide services for free under a *pro bono* scheme.

EXPLAINED: Claire could fund the case herself from her own money. Alternatively she could use a conditional fee agreement (CFA). This would involve finding a solicitor who is willing to take on a case. They would then agree a fixed fee to cover the standard cost of taking the case to court and an uplift (or success) fee. If the solicitor loses the case he or she gets nothing. If he or she wins the case, he or she will take the standard fee in the form of costs paid by the losing side and the uplift fee from the client's damages.

COMMENT: Once again, the justification for the difference in marks is that the client, Claire, is able to make an informed decision because of the explanation.

- on suitable options.
- ADR: most learners advised Claire towards some form of ADR due to her lack of money and fear of going to court.
- Sources: most learners had the presence of mind to put themselves forward as the solicitors dealing with the case and managed at least one valid alternative

Areas for improvement:

- Not linking information in the sources with the relevant legal point. For example, some candidates provided accurate information about damages but failed to link this to Claire's specific losses. Some candidates did the opposite and explained what Claire would be entitled to without describing the types of damages and/or losses.
- Some learners were unclear how a CFA would work in practical terms - i.e. who pays for what, who is taking the risk, where the fees come from in a winning case and what the role of ATE insurance is and who pays for it?
- Some learners were unaware that there is no legal aid for PI cases like Claire's and seemed unclear about the basis of public funding if it was applicable.

Assessment focus: AO3 - Analysis and evaluation of legal authorities, principles and concepts

There was a significant opportunity to score AO3 marks in this question. This is because the breadth of the specification covered by the task provided a range of relevant critical issues to explore. Consequently very few candidates failed to score any marks. However, high scoring scripts were less common. In order to score high marks learners needed to demonstrate the ability to provide something more than bald critical points.

It must be remembered that this task is a client letter and does not require a discursive essay style response in lengthy continuous prose. However, developed points provide the client with some valuable context allowing them to make more informed decisions. In particular, a short objective discussion offers a balanced perspective.

One of the problems with candidates who scored fewer marks was the lack of development. Such candidates often relied on providing a wide range of single, bald points and/or, for example, mechanically repeating the same critical points for each and every type of ADR. In order to improve these responses learners need to understand what a point, a developed point and a well-developed point looks like.

The following candidate examples have been annotated (P), (DP) & (WDP) to indicate what development looks like. As a general rule development means moving a point on rather than providing more information on the same point. Development might be in the form of an authority, further context, example or statistic or it might be in the form of a counter-point. A well-developed point would be a further step on the same basis.

Candidate Example 1: ADR

THE REPEATED BALD POINT APPROACH:

Negotiation is cheap, quick and efficient. Mediation is cheap, quick and efficient. Conciliation is cheap, quick and efficient. (3 marks - because single bald points gain a maximum of 3 marks regardless of how many there are, how widespread they are or how accurate they are)

THE DEVELOPED POINT APPROACH:

POINT (1 mark): "One benefit of mediation is that it is cheap. (P)"

DEVELOPED POINT (2 marks): "One benefit of mediation is that it is cheap (P). Some mediation services are free, some (like family mediation) might be state funded and most mediation is cheap by comparison to the courts (DP)."

WELL DEVELOPED POINT (3 marks): "One benefit of mediation is that it is cheap (P). Some mediation services are free, some (like family mediation) might be state funded and most mediation is cheap by comparison to the courts (DP). However, cheap justice is not necessarily good justice and the civil courts provide a more definitive outcome which parties are bound by

COMMENT: The single point is a bald point - it's 'cheap'. Although the developed point raises three further points (free, state-funded and by comparison to the civil courts), they all cover different aspects of the same point - why it is cheap. The third point which makes this a well-developed point is a counter-point - i.e. it sees things from another perspective and is, therefore, objective and balanced.

Candidate Example 2: Funding

THE REPEATED BALD POINT APPROACH:

A conditional fee agreement is convenient (1), relatively risk free (2), makes use of a professional lawyer (3), is regulated by the Law Society if you use a proper solicitor (4) and is especially good for PI claims (5) - (gets 3 marks - because single bald points gain a maximum of 3 marks regardless of how many there are (in this case 5), how widespread they are or how accurate they are)

THE DEVELOPED POINT APPROACH:

POINT (1 mark): "One benefit of a Conditional Fee Agreement (CFA) is that it is relatively risk free (P)"

DEVELOPED POINT (2 marks): "One benefit of a Conditional Fee Agreement (CFA) is that it is relatively risk free (P). Most of the risk is borne by the solicitor who gets nothing if he/she loses the case and is unlikely to take the case on if they are not confident of winning (DP)."

WELL DEVELOPED POINT (3 marks): "One benefit of a Conditional Fee Agreement (CFA) is that it is relatively risk free (P). Most of the risk is borne by the solicitor who gets nothing if he/she loses the case and is unlikely to take the case on if they are not confident of winning (DP). However, the claimant will usually have to fund ATE insurance to cover the other side's legal costs should they win and claimants with genuine cases may struggle to find a solicitor to take the case on if the evidence is not overwhelming and risk free (WDP)."

COMMENT: The single point is a bald point - it's 'risk free'. Although the developed point raises two further points (risk borne by solicitor and confidence in winning), they both cover different aspects of the same point - why it is risk free. The third point which makes this a well-developed point is a counter-point - i.e. it sees things from another perspective and is, therefore, objective and balanced.

Candidate Example 3: Civil Justice System

THE REPEATED BALD POINT APPROACH:

The civil justice system is expensive (1), slow (2), inefficient (3), time-consuming (4) and inaccessible (5) (only gains 3 marks - because single bald points gain a maximum of 3 marks regardless of how many there are (in this case 5), how widespread they are or how accurate they are)

THE DEVELOPED POINT APPROACH:

POINT (1 mark): "The civil justice system is expensive. (P)"

DEVELOPED POINT (2 marks): "The civil justice system is expensive (P). Legal aid is not available for PI cases so the traditionally expensive lawyer's fees would be a barrier to many claimants (DP)."

WELL DEVELOPED POINT (3 marks): "The civil justice system is expensive (P). Legal aid is not available for PI cases so the traditionally expensive lawyer's fees would be a barrier to many claimants (DP). However, where a claimant opts for a cheaper alternative such as mediation there is no guarantee that it will work or that the defendant will fulfil their obligations meaning it will have been a false economy compared to the enforceable decision of a civil court"

COMMENT: The single point is a bald point - it's 'expensive'. Although the developed point raises two further points (unavailability in PI cases and traditional high cost), they both cover different aspects of the same point - why it is expensive. The third point which makes this a well-developed point is a counter-point - i.e. it sees things from another perspective and is, therefore, objective and balanced.

Assessment focus: AO4 - Presentation and structure

This assessment focus (AO4) relates to the quality of the presentation and structure. It does not involve any assessment (qualitative or quantitative) of the law or its application in this task.

There is a difference in audience when comparing the client letter to the file note. The expectation of a professional format and appropriate language would be one expectation whereas technical explanations of the law and detailed and wide-ranging citation of authorities may be less necessary here.

Once again, the layout and setting of a client letter, being fairly straightforward, meant that the vast majority of candidates scored full marks. Although a lack of headings, sub-headings, paragraphs and bullet points would assist the reader, few candidates were not given full marks due to their absence. Exceptions to full mark scores were generally due to:

- Incomplete responses (due to running out of time or simply abandoning the question)
- Responses which significantly lacked balance
- Purely anecdotal answers which failed to convey any information required by the task
- Use of English, grammar and/or syntax which failed to convey a coherent message
- Fundamental errors which would convey incorrect, incomplete or incomprehensible information to the reader

Summary

Key advice for future development includes working with learners in order to:

- Discourage a 'shotgun' approach to responses and encourage more task-focused answers
- Discourage the use of extensive descriptions of case facts, re-telling of the scenario and use of inappropriate material based on the purpose of the task (e.g. extensive technical legal information in a client letter)
- Practice live task timings to produce more balanced responses through the use of mock assessments
- Encourage the use of headings, sub-headings and bullet points to produce more organized and structured responses
- Make thorough use of the full range of support materials especially SAMs and exemplar responses to create mock assessments which develop the learner's ability to think on their feet, be more selective and produce better quality application and evaluation - in particular producing well-developed points

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