L3 Lead Examiner Report 1906

June 2019

L3 Qualification in Applied Law

20168K – Unit 1 Dispute Solving in Civil Law

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Grade Boundaries

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.

Grade boundaries for this, and all other papers, are on the website via this link:

http://qualifications.pearson.com/en/support/support-topics/results-certification/grade-boundaries.html

Unit 1 – Dispute Solving in Civil Law – 20168K

Grade	Unclassified	Level 3			
		N	P	M	D
Boundary Mark	0	11	21	31	42

Introduction

This session marked the first academic year during which two assessment opportunities within one year were available for the same unit - there having been no January sitting in 2018 to precede last year's summer assessment. Numbers were surprisingly buoyant with barely any difference in the size of this cohort and the January sitting. Student performance was also consistent with previous sessions.

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.

The assessment followed an established format. In preparing for the assessment candidates will have benefited from making use of both the 1806 and 1901 papers, mark schemes and LE Reports. Furthermore, 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 (one of which has recently been updated) 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 number of centres submitted work without including signed authentication sheets and/or learner record sheets.

Introduction to the Overall Performance of the Unit

The performance during this session was remarkably consistent with both previous sessions (1806 & 1901). Given that there were two assessment opportunities this (academic) year, numbers were almost identical between 1906 and 1806 when there was a single assessment opportunity. This is despite an interim sitting in 1901 with a cohort of 800. Consequently, there were, as might be expected, a higher proportion of re-sit students (c.19%). However, this seemed to have little or no adverse impact on performance. Cumulative mark distribution mean score and standard deviation were all very similar.

Centres are, of course, free to enter candidates when they choose (within the rules set out by Pearson). There is a clear tactical opportunity in maximising positive student outcomes afforded by re-sits. However, we do not track 'improvement data' which would support of refute the efficacy of such practice. As stated above, overall performances were remarkably consistent with previous sessions and the presence of a larger re-sit cohort made no discernible negative impact.

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

As the qualification matures, the assessment team are starting to see consistent practices which, if addressed, would improve student performance and outcomes.

Candidates should not:

- Write their own narrative 'running commentary' on the given facts. Unless a link is being made between a given fact and the application of law, it will not gain any credit
- Adopt an approach to either task which involves running through an exhaustive check or tick list. The real skill on Unit 1 is recognising the issues in the given facts and applying the law that is relevant. Attempting to cover everything in the specification in

a single response wastes time on material that is not creditworthy. It is not uncommon to then observe these candidates running out of time on the second task
- Use a 'pre-learned' template. Responding to the Part B materials cannot be anticipated until the day of the assessment and relying on generic templates undermines proper engagement with the tasks
- Fail to draw conclusions – or use conditional (may/could) conclusions. It is good practice to draw interim conclusions as the task proceeds as these can be drawn together into an over-arching conclusion at the end

Particular issues in 1906

1. The nature of the Part A pre-release materials

The intention of the Part A pre-release materials is that they should provide a 'catalyst' or starting point for the candidates' personal research. Usually these will come in the form of an extract from a leading source. Such extracts may be from original primary sources or adaptations thereof and may appear in isolation or alongside some broader contextual information.

So, for example, in 1806 the materials featured breach and in 1901, the thin skull rule. Since every assessment will be about negligence, the pre-release materials allow the assessment to shift focus and ensure the breadth and depth of study necessary when assessing a single substantive theme. Consequently, in order to access full marks, it will be necessary to recognise the relevance of that paper's 'special focus'.

In this session the pre-release materials featured selected extracts from the UK Supreme Court's judgment in Robinson v Chief Constable of West Yorkshire Police [2018]. Factually the case is about the liability of the police in operational circumstances. However, the court also considered the approach to be adopted when establishing a duty of care in negligence generally.

It was reasonably clear that a minority of candidates were somewhat confused by the Part A materials on this occasion. The report will clarify the significance of the particular materials below. However, to be clear, it is not the intention of the Part A pre-release materials to indicate the factual circumstances of the forthcoming Part B assessment. Some candidates were clearly struggling to include something about police powers even though a) this is not part of the Unit 1 specification and b) it had no relevance to the facts provided in Part B.

The Part A pre-release materials will flag up a specific 'legal' area within the law of negligence which candidates should research; it will not provide a factual template to apply to the circumstances of the scenario in Part B. Candidates would be advised to use the prompt in Part A to investigate the particular aspect of duty, breach or causation indicated. In Part B the expectation will be that candidates have a good grasp on the theme for that paper and that this is reflected in their response.

2. Cross-over information

This is the practice of putting Part A material in Part B and *vice versa*. I have little to add to what was said in the 1901 LE Report on this point, other than to say that it is becoming an ingrained practice which is costing candidates valuable marks. By far the most common version is 'damages' included in Task 1 and (causation of) 'damage' issues in Task 2.

The most distressing aspect of this practice is that it is often correct material that would be creditworthy in the right place. So, candidates are throwing marks away for the sake of being clear about the difference between (causation of) damage and damages and which belongs in which task. This is despite being made clear in the rubric of the task commands.

3. Schooled responses (also refer to 1901 LE Report)

Again, there is little to add to the 1901 report on this matter. However, the assessment team are reporting that this practice seems to be getting more common. I have reproduced part of last January's report addressing the matter below:

"... [a]lthough it fell short of malpractice, there was clear evidence of some centres helping candidates to prepare for the assessment through the use of formulaic templates and other pre-determined and rehearsed patterns of work. Candidates should prepare for the assessment independently and this is made clear on page 3 of Part A, the specification and other guidance such as the ASG. A number of markers expressed concerns over what appeared to be whole centres where the candidates look as though they had been dogmatically 'schooled'. It is perfectly legitimate to use SAMs and past papers to practice and for teachers to give students feedback on formative work. This may result in a methodical approach but should not include identical, formulaic templates that are

specifically relevant to the nature of the task indicated in Part A as this would constitute malpractice."

Question 1 (File Notes)

Assessment focus: AO1

Most candidates did well here. At the top of the mark range was a requirement that learners 'explain' each element of negligence with appropriate supporting authority and, as a discriminator for full marks, to place the response 'in the light of Robinson' with a supporting authority.

Duty of care

In the light of Robinson

As long ago as the 1806 LE Report, there has been reference to the new clarification on establishing a duty of care as set out in 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."

Having covered breach (1806) and an aspect of causation (1901) this paper turned its attention to duty of care and to the particular theme of this important new judgment. The facts provided in the Part B materials featured a case which the candidates were told was 'novel'. This provided the prompt to approach the task 'in the light of Robinson'. The carefully selected extracts in the Part A pre-release materials provided a summary of the correct approach.

Candidates might have said a) there is an existing precedent and this creates a duty of care (unlikely given the facts) or b) the situation is analogous to an existing precedent (perhaps something involving bicycles) and a duty should be developed by analogy, or c) this is a novel situation and, according to Robinson, the court should apply the Caparo test (most likely). As long as they gave their reasoning, candidates could achieve top 'in the light of Robinson' credit whichever route they adopted.

Many candidates simply applied Caparo regardless. Some, who were clearly unclear why Robinson was in Part A and what it meant, tried to bolt Robinson on to their answer but not in the manner envisaged above.

I have included two examples:

Candidate Example: WRONG

"Branwen will owe Rhiannon a duty of care because she fulfils all three parts of the Caparo test. If Rhiannon had been injured by the police in similar circumstances they would owe her a duty of care like in the Robinson case"

Comment: This candidate has obviously taken the prompt from the Part A pre-release information and tried to make the facts of Robinson relevant to the task even though there is nothing in the given facts to support this. They have no used the legal principle.

Candidate Example: RIGHT

"We are told in Part B that there are no existing cases involving skateboards. According to the Robinson case in Part A (para 27), the court should establish a duty of care by applying Caparo when they are dealing with a novel case like this"

Comment: This candidate has placed their response 'in the light of Robinson' by applying the legal information given in Part A to the factual circumstances presented in Part B.

Breach

The breach here was obvious and straightforward. Branwen simply needed to fall below the standard of the reasonable skateboarder. The evidence was there in Part B: 'she was going too fast' and 'she shouldn't have been on the pavement'. A simple application of Blyth v Birmingham Waterworks would have been sufficient. For some reason, candidates felt compelled to analyse two further areas which were largely a waste of time: a) Branwen might be a learner (Mullins) or an expert (Bolam) skateboarder, and/or b) going through all of the factors which can alter the standard of care – none of which had any particular application. Some candidates were prepared to speculate on facts and circumstances that were not given (or even add in made up facts) simply in order to make a factor fit. For example, suggesting Rhiannon might be blind/deaf and therefore owed a different standard of care (Paris v Stepney). This is clearly a practice to discourage.

Causation

Factual causation was generally dealt with well with few errors and/or missing authorities. It was a very straightforward 'but for' (Barnett) situation and probably wasn't necessary to go on and consider legal causation but most candidates offered something on the harm not being too remote (Wagon Mound). However, what was absolutely unnecessary was speculation on *res ipsa locquitor*, the thin skull rule and 'type' of damage foreseeable etc – these seem to be part of a determined 'check list' approach which can lead candidates into wasting valuable time.

Helpful tips for future papers:

- The Part A pre-release materials are intended to act as a 'trigger' or 'springboard' from which candidates conduct further research. In order to access the top of the mark bands it is vital that this is reflected in the candidate's response.
- Approaching the establishment of a duty of care in the future should be guided by the principles set out in: Robinson v Chief Constable of West Yorkshire Police [2018]: a duty of care can be established in a number of ways. The preferred approach is to use existing precedents and develop the law incrementally and by analogy. Where an apparently novel situation with no precedent or relevant statutory authority arises then the three-stage test from Caparo should continue to be used. Therefore, candidates should only go through the Caparo tests where it is made obvious that the situation is novel.
- There is no need to recite the facts of cases

- Do not confuse (causation of) damage with 'damages'
- Do not include issues that have no relevance such as the thin-skull principle, foresight of type of harm and *res ipsa loquitur*

Assessment focus: AO2

The challenge on this paper was recognizing the context of Robinson. After this the remainder of the question was fairly straightforward, Consequently AO2 performances were an improvement on previous sessions where a procedural aspect of (for example) breach or causation was more challenging. However, there were a range of points worth noting which will improve future performances:

Failing to sub-conclude and conclude

Including conclusions and using them to determine liability are discriminators on this unit

Conclusions may be:

- Terminal – at the end of the response brining the answer together
- Interim – sub-conclusions as the candidate goes along (X owes a duty of care, has breached his duty or has caused damage)
- Bald – either terminal or interim – unsupported statements (X is liable in negligence)
- Reasoned & justified – (X is liable because – followed by an explanation)
- Conclusions should NOT be conditional – X 'may' or 'could' be liable or 'if X then Y but if X then Y'

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. "Branwen is an expert skateboarder and will have to meet the standard of the professional skateboarder" - (Bolam)

2. "Branwen is a learner skateboarder but will still have to meet the standard of the reasonable skateboarder" - (Nettleship)

The information in Part B makes no reference to Branwen's level of proficiency. This is made-up speculation just to make a point which isn't actually relevant.

Lack of reliance on the Part B materials

As a vocational qualification, candidates who can think on their feet will always perform well. The candidates who make links between the facts given in Part B and the legal principles applicable score high AO2 marks. Students need to practice this skill using past papers and made-up mini-scenarios.

Assessment focus: AO3

The most obvious themes to gain AO3 marks on this paper would have been a discussion of:

The role of public policy – which could be considered as part of the fair, just and reasonable test or as part of a wider discursive appraisal

The role of judges and precedent – in developing the law to meet changing circumstances, technological advances and analogous situations

The nature of the 'compensation culture' and whether such accidents are just part of everyday life

Some perspective on blame and fault as underpinning decisions in areas like this case

Candidate Example:

POINT (1 mark): "The Robinson approach to establishing a duty of care recognises the importance of considering the fair, just and reasonable limb of the Caparo test in novel cases (P)"

DEVELOPED POINT (2 marks): "The Robinson approach to establishing a duty of care recognises the importance of considering the fair, just and reasonable limb of the Caparo test in novel cases (P)". In doing so the rule allows judges to adapt the law to meet social changes and technological advances. (DP)"

WELL DEVELOPED POINT (3 marks): "The Robinson approach to establishing a duty of care recognises the importance of considering the fair, just and reasonable limb of the Caparo test in novel cases (P)". In doing so the rule allows judges to adapt the law to meet social changes and technological advances. (DP)" However, some would argue that this gives judges too much power and can lead to judicial law-making. (WDP)"

Assessment focus: AO4

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 was so poor that it failed to convey a coherent message
- Fundamental errors which would convey incorrect, incomplete or incomprehensible information to the reader

Question 2 (Client Letter)

Given the vocational nature of the qualification, it is pleasing to see candidates engaging with the client advice task with authenticity and enthusiasm. In general, the client letters were done to a high standard and scored higher marks than the file note.

Aspects demonstrating good practice:

- There seemed to be a clear grasp of the fact that the task really requires learners to focus on three key areas: damages, funding and advice and alternatives and the civil justice system. This is made clear in the task commands in Part B.
- As a vocational qualification, there was clear evidence the A4 element of the specification (Legal Skills) was 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:

- A significant minority of candidates focused too heavily on damages to the detriment of the other two areas.
- A few candidates had obvious timing issues – usually due to spending too much time on task 1 or the damages element of task 2 or both.
- Some letters had too much 'technical/legal information' for a client orientated task.
- There were a number of responses where the client was 'bombarded' with exhaustive lists of alternatives.
- Some information – especially regarding funding, advice sources and alternatives – was 'stated' without being explained which lacks information for clients.
- 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 of 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

Mostly well written with appropriate detail and balance. For high marks candidates needed to explain something covering the three key areas as laid out in the task: damages, funding and advice and alternatives and/or the civil justice system. The use of authorities may not be appropriate in a client letter although these were credited especially where they were reflecting on the quantum of damages received in similar cases. 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 or the Compensation Act 2006/Damages Act 1996), 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.
- Candidates would score higher marks if they just described general damages, special damages and then chose one form of funding/advice and one alternative or civil justice issue and explained them well instead of trying to cover a longer list that is too ambitious.
- Try and stick to things that are relevant to the client and their scenario. For example, there is generally no legal aid for PI cases so describe conditional fee arrangements instead.
- There seemed to be some confusion between:
    - sources of funding and sources of advice – not the same thing
    - 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 or stating things rather than explaining them:

Candidate Example 1: **WRONG APPROACH**

You (Rhiannon) can't get legal aid so you could go for ADR like negotiation, mediation, conciliation or arbitration which are better as they are quick, cheap, private and easy.

Comment: the format is impersonal and poorly set out. The information is sparse and lacks explanations. It doesn't leave the client very well-informed despite a range of points being made.

Candidate Example 1: **RIGHT APPROACH**

Dear Rhiannon,

You will not be able to get legal aid as the government has removed it for personal injury cases like yours. However, there are a range of alternative ways to resolve your issue. One of the best for you would be mediation. This would involve a neutral third party acting as a go-between for you and Branwen in order to negotiate a mutual settlement. It has the benefit of being much cheaper than going to court which could cost thousands of pounds and take a very long time.

Comment: Although there are fewer points covered here the response would score higher marks as it has explanations and context and is a more effective piece of work as a client letter.

Assessment focus: AO2

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 – especially in relation to damages where, for this session, there were really only special damages and pecuniary losses as opposed to previous sessions where general damages were suggested by information given in Part B.
- 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 Rhiannon's main action would be for special damages (£10k plus 6 x £300) and that there was little (if anything) in the source to support general damages. Furthermore, some candidates had an impressive understanding of the distinction between lump sums and structured settlements and which would be most appropriate here.
    - Funding: most learners recognised the fact that, as a mechanic, Rhiannon was on a modest income, that there is no legal aid for PI cases and then advised her on suitable options.
    - ADR: most learners advised Rhiannon towards some form of ADR due to her lack of money and the non-availability of legal aid.
    - Civil justice system: most learners were able to work out that a case involving £10k plus 6 x £300 would come under the financial band placed on the fast track and tried in the County Court by a District or Circuit Judge.

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 Rhiannon or her particular losses. Some candidates did the opposite and explained what Rhiannon would be entitled to without linking these to the particular types of damages.

- Some learners were unaware that there is no legal aid for PI cases. There was a lack of clarity on exactly how a CFA would work in practical terms. A significant minority were very confused about the tracks, their financial limits and the relevant court with the Small Claims Track frequently wrongly cited.

Candidate Example 1: Civil justice issues

LISTED: Your (Rhiannon's) case is likely to end up on the fast track in the County Court.

EXPLAINED: Your (Rhiannon's) case involves a sum which is easy to calculate. You are entitled to £10,000 for your personal injuries and 6 x £300 for lost earnings. This comes to £11,800 which is within the limits of the Fast track (£10,000 - £25,000). This is a process which involves fast allocation and hearing (30 weeks), a quick easy one-day trial and strictly enforced court timetables. It is likely that the case will be heard by a District or Circuit judge in your local County Court. Given the straightforward nature of your case a District judge would be well qualified to handle your case.

Comment: The latter example gives a level of context and explanation that both informs and reassures the client. Importantly, it also links 'real' information in the scenario with the appropriate advice which is what the AO2 skill is all about in this task.

Candidate Example 2: Funding

LISTED: You (Rhiannon) could consider an alternative to paying yourself by using a CFA.

EXPLAINED: Instead of risking your own savings, you (Rhiannon) could consider an alternative means of funding called a CFA. This is where you find a lawyer who is willing to take your case on and, if she/he loses it will cost you nothing but if they win their ordinary fee will be paid by the losing side and an additional success fee will come out of your damages. You can take out special insurance against having to pay the other side's costs if you lose.

COMMENT: The justification for the difference here is, once again, hopefully obvious. In the former Rhiannon is left wondering what a CFA is and whether it would be suitable and why whereas in the latter this is explained to her.

Assessment focus: AO3

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, 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 critical context regarding relevant benefits and drawbacks of different courses of action, 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 example 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: Civil justice system

THE REPEATED BALD POINT APPROACH:

The civil justice system is bad because of its delays, expense, formality, outcomes which are not always enforced, need for lawyers, lack of technical expertise and the lack of privacy. 5 marks - because of multiple single bald points. Despite there being 7, they gain a maximum of 5 marks because, regardless of how many there are, or how widespread they are or how accurate they are, they are not developed.

THE DEVELOPED POINT APPROACH TAKING JUST **ONE** OF THE ABOVE POINTS:

POINT (1 mark): "One disadvantage of the civil justice system is its lack of privacy. (P)"

DEVELOPED POINT (2 marks): "One disadvantage of the civil justice system is its lack of privacy. (P)" "This is because the English legal system is based on open justice and the press and members of the public have access to all trials unless they involve sensitive matters such as those relating to children or mental health. (DP)"

WELL DEVELOPED POINT (3 marks): "One disadvantage of the civil justice system is its lack of privacy. (P)" "This is because the English legal system is based on open justice and the press and members of the public have access to all trials unless they involve sensitive matters such as those relating to children or mental health. (DP)" "However, having the press and public in court can be an advantage where their presence places a defendant under pressure to maintain their reputation. (WDP)"

COMMENT: The second example shows how taking just one single point can be turned into a 3-point WDP and access the top of the mark range because it demonstrates the ability to make a sustained, reasoned argument.

Assessment focus: AO4

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:

- Merging material for different tasks into the wrong task or merging all of their material into a single task
- Learners approaching tasks with a template which seems to indicate a level of 'taught preparation' – this is an assessment based on individual preparation
- Spending too long on irrelevant, repeated or extended responses and running out of time to properly complete both tasks
- Candidates taking a shotgun approach or running through a tick-list and including material which is both irrelevant and not creditworthy
- 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)

Encourage:

- Candidates to follow the structure indicated by the command tasks
- The use of the Part A pre-release material as a springboard to private research and preparation for the Part B controlled assessment
- Learners to 'layer up' their task 1 responses so that liability is built up on a logical basis
- Practising live task timings to produce more balanced responses through the use of mock assessments
- The use of headings, sub-headings and bullet points to produce more organized and structured responses
- The 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