

Examiner's report

CTSI Professional Competency Framework

Stage 1: Unit 3 Trading Standards Law Part 1 Examiner's Report May 2022

General

57 Candidates sat the exam in May 2022, marks ranged from 30 up to a fantastic 83 achieved by 2 candidates. There is a lot of material to study for this paper and candidates who have taken the exams during this cycle have still been facing some of the challenges brought about by the pandemic and have had all of their study via remote learning.

Overall, most candidates showed a good understanding of the syllabus for Unit 3, but some students failed to demonstrate a detailed knowledge in the key areas of the syllabus in particular CPRs, ICACS, Due Diligence and Powers. Some general feedback that applies to all candidates is time management, it's important to enable sufficient time to be spent on each question, it was clear by some of the answers that the candidate had run out of time on some questions having spent far too much time writing detailed answers for Section A questions. Another important piece of feedback is not only to read the question, but also to understand what the question is looking for.

Candidates have a limited time so it is essential that they stick to the relevant points, if the questions asks for an explanation this should be in your own words not reciting definitions, if it asks for case law or examples remember to include them. You can only be awarded marks for including points that relate to the question. A number of candidates strayed way off topic or gave answers which did not relate to the question at all. Whilst it can be tempting to fill the page with the things you can remember, this is very unlikely to gain marks and candidates should focus that time on other questions. Finally, try to formulate a structured answer and deal with points in order rather than mixing all together, unless otherwise indicated by the question, write in sentences and paragraphs not bullet points (unless you're running out of time and you may then pick up basic marks).

Section A

Q1 35 candidates answered question 1, marks ranges from 2 to 9.

This was a popular question understandably as it relates to a key concept of the legislation which is in the detailed knowledge area of the syllabus and the majority of candidates obtained a respectable mark. To gain full marks candidates were expected to identify that the explanation of misleading actions is in Reg 5 and describe what it means – the key points being that it contains “false information” or “it’s overall presentation deceives”. A misleading action must be in relation to one of the matters in Reg 5(4) or 5(5) – this is an important point that some of the weaker candidates missed, it was not expected that candidates list these matters but giving a couple of examples gained marks. As with other CPR offences, misleading actions are subject to the transactional decision test, this was important to mention but a couple of candidates wasted vital time going into too much explanation of this and other concepts. Its important with Section A questions to stick to the main focus of the question, whereas if this was being discussed as part of a Section B question looking at a scenario, it may be appropriate to include explanation of other concepts. The better candidates also included reference to other practices which are included in

Reg 5 - marketing which creates confusion with other traders products, TM, trade names etc. and failure to comply with commitments in code of conduct. There were a number of cases which could have been used e.g. Warwickshire CC v Halfords Autocentres Ltd (2018), Motor Depot Ltd & Wilkinson v Kingston Upon Hull City Council (2012) EWHC, R V Mears (2011).

Q2 35 candidates answered question 2. Marks ranges from 3 to 7

Again, a popular question relating to a key concept in criminal law. Most of the candidates that attempted this question scored reasonable marks. Candidates were expected to explain that mens rea is the “guilty mind” the state of mind that the prosecution must prove a defendant to have had at the time committing a crime and give some examples of how this is included in offences – intention, recklessness, wilfully, knowingly, maliciously, dishonestly etc. Then to consider how this is different to strict liability offences, where an accused can be found guilty of an offence by simply committing the actus reus (guilty act) without the need for the prosecution to prove the existence of mens rea. There were further marks for using examples from the CPRs, professional diligence offences include the term “knowingly or recklessly” and Sch 1 banned practices – 6, 7,13, 18 and 27 also include elements of mens rea.

Q3 0 Candidates answered question 3.

Disclosure under Pt 9 of the Enterprise Act 2002 is part of the working knowledge on the syllabus so it’s somewhat disappointing that no candidates attempted to answer this question, although perhaps there were other more appealing questions! Candidates were expected to explain what is meant by specified information as per section 238 – in essence this is information gathered by authorities in exercising enforcement functions. The second part of the question asks candidates to identify the circumstances that such information can be disclosed. This is in sections 239-243 of the Act and includes: consent, EU obligation, statutory functions, use in civil proceedings – consumers or IP rights holders, criminal proceedings and investigations and overseas disclosures.

Q4 38 candidates answered question 4. Marks ranged from 4 to 10

The most popular question which was answered really well by most of the candidates that attempted it. All but one candidate achieved at least half marks with 15 candidates giving excellent answers to achieve full marks, which is not surprising given that this could apply to any area of TS work. It was quite a broad question so candidates were able to draw on their experiences and gave good examples of types of evidence such as testimony, witness statements, expert evidence, documentary and real evidence, photographs and digital evidence. Some candidates included explanations of direct and circumstantial evidence, primary and secondary evidence and the better candidates also covered bad character and hearsay. Those who did not achieve full marks either did not include 5 different types or gave no examples.

Q5 29 candidates answered question 5. Marks ranged from 3 to 10

Over half of the candidates attempted this question and again most achieved at least half marks with 6 candidates obtaining full marks. This is another key area of the detailed knowledge part of the syllabus so candidates should have been able to provide a good answer. The question was split into two parts, firstly, candidates were asked to outline the cancellation rights that apply, most answered this correctly including those for goods and services – although a few candidates need to revisit this as there seemed to be confusion regarding when the cancellation period starts and ends. The better candidates also referred to the extension for up to 12 months where cancellation rights have not been provided. The second part of the question required candidates to consider the exemptions to cancellation rights and why these are in place. There are eleven different exemptions so there was plenty of choice for candidates, most opted for the obvious ones such as made to the consumers specification, goods which are likely to deteriorate and urgent repairs.

Q6 33 candidates answered question 6. Marks ranged from 3 to 10

Again, popular with more than half of the candidates and some good answers, most over half marks with another 8 candidates achieving full marks. This was a basic price marking question, the first part asked candidates to explain how prices should be indicated. There were four marks for this part, candidates were expected to include that it must be positioned so that consumers don't need to seek assistance, unambiguous, easily identifiable and clearly legible, and in proximity to the product or a visual or written description. The second part of the question deals with exemptions, candidates were asked to identify 3 exemptions and the rationale for them. Much like Q5, there were lots of options to choose from and most candidates included the more common ones such as auction sales, antiques and window displays where the rationale were more obvious.

Section B

Q7 41 candidates answered Q7. Marks ranged from 7 to 32

Unsurprisingly, this was one of the more popular Section B questions and should have been relatively easy for all candidates being a core part of the syllabus and important to most areas of enforcement work. However, marks were pretty evenly spread with half of those candidates that attempted the question not reaching half marks and only 3 candidates giving really good answers. The first part of the question for 15 marks asked candidates to outline the powers when enforcing legislation such as the CPRs. Firstly, correct identification of the CRA Sch 5 and some discussion around enforcers and applicable legislation was expected, although the question referred to the CPRs the powers in the CRA apply to many other pieces of legislation and candidates were expected to acknowledge this by referencing para 10 and 11. Disappointingly, a couple of candidates did not refer to the CRA at all, instead referencing powers under the CPRs (replaced in 2015) or PACE (not applicable). To gain the rest of the marks for part a) candidates simply needed to list the available powers. The second part of the question wasn't answered particularly well by a lot of the candidates, it asked them to explain (to an accompanying police officer) powers to be used in the scenario and how the visit and seizure were to be carried out.

This should have included further information specifically regarding para 23 and 25 in relation to entry and inspection, and para 28 and 29 in relation to seizure. This gave candidates the opportunity to show their knowledge of the practical requirements – advance notice (or not), reasonable time, other persons etc. and to explain how the power of inspection equates to a power of search (*Helidon Vuciterni v Brent Mag Court*), and explore what was required for the particular scenario – examining prices, requesting docs, what might be seized and how would this be done. As with other questions on powers, additional marks can always be gained by referencing associated legislation such as PACE and CPIA.

Q8 Question 8 was attempted by 45 candidates. Marks ranged from 9 to 28

The most popular section B question, with 17 candidates scoring over 20 marks which is respectable. A good knowledge of the scope and definitions in the legislation was required to achieve good marks, as with most scenario questions, initial marks are available for outlining how the legislation applies and any definitions that are relevant, in this case, commercial practice, average consumer, off-premises contracts were important to include, as well as consideration of whether Mike was a vulnerable consumer. The weaker candidates, or those running out of time omitted these and failed to pick up the marks available. This was a typical doorstep crime scenario with numerous potential offences, the best way to approach these is by looking at the sequence of events and highlighting the potential offences in order. There were potential banned practices in relation to the NCCZ, misleading actions on the leaflet and statements made by the trader as well as several potential aggressive practices and professional diligence. The weaker answers missed

some of these. The question also asks candidates to think about evidence required, thinking about the elements of the offence is key here, which some candidates failed to consider, but most gave good answers.

Q9 Question 9 was attempted by 12 candidates. Marks ranged from 8 to 19

Many candidates seem to prefer the enforcement/investigation type questions rather than trader advice which perhaps shows a lack of experience in this area. Those candidates who attempted this question seemed to struggle to put the requirements into simple terms and didn't include all the relevant issues or what practical steps the business should take. The second part of the question was slightly different to Q8, but similar questions have appeared in recent papers. Many candidates did not properly understand or answer the question, and only identified some of the options available which could range from informal advice, guidance or training, prosecution or civil enforcement under the Enterprise Act 2002, and did not consider their reasoning for the chosen approach.

Q10 Question 10 was attempted by 15 candidates. Marks ranged from 8 to 29

Another less popular trader advice question, but for those who attempted it, most achieved over half marks. For questions such as these asking for an outline of a training session, candidates generally struggle to decide how to convey this. A full narrative is not required but a breakdown of the key points to be covered with a brief summary would suffice. For this question an introduction of the key concepts – CPRs, ICACS, BPRs, with an explanation of the scope and key definitions would be an appropriate place to start. Then break each of the pieces of legislation down and cover the offences using relevant examples that the business can relate to. The second part of the question covers due diligence and again, explaining this to the trader in simple terms and giving some practical, relevant steps which they can put in place.