

## Examiner's report

### Qualifications Framework

#### Stage 1: Unit 1 Regulatory Environment & Enforcement

#### Written Examiner's Report September 2024

##### General

Nine candidates sat the Unit 1 examination paper during the September cycle and six candidates achieved a pass mark or higher.

The main areas for improvement noted by the examiner are similar to previous years comments. Some candidates did not provide sufficient detail in their answers, either due to a lack of knowledge or their exam technique. For Part B questions, several candidates wrote short answers, which lacked sufficient detail and analysis to obtain the marks needed to achieve the required 40%. It is important that the amount written and the detail in the answers provided is influenced by the marks allocated to the question selected.

Practicing answering past papers under timed conditions can also help with exam technique. Answering the question set and only discussing areas of law that are on the syllabus or asked for in the question, also helps to increase the marks obtained. It is also important that candidates read the question carefully and ensure they are answering all parts of the question, to maximise their marks.

The marks awarded for this paper ranged from 31% to 54%.

##### Section A

Q1 This question was answered by one candidate.

This question assessed candidates' knowledge of the difference between a consumer notice, a consumer contract and a representation. Consumer notices relate to rights and obligations between a consumer and a trader or purport to exclude or restrict a trader's liability and they can be expressed to the consumer directly or intended to be seen by them. A consumer contract could be discussed describing contract formation and the definitions of a consumer and trader in areas of law such as the Consumer Rights Act 2015. Finally explain what a representation is and discussing the differences between the three would have achieved full marks for this question.

Q2 Three candidates elected to answer this question. Marks awarded ranged from 1 to 3.

Part 1 of the Consumer Protection Act 1987 is part of the basic knowledge for the Unit 1 syllabus. This question tests the knowledge of the candidates in relation to the requirements for claiming redress, such as what a product is, what a defective product is, who the producers are and what redress can be claimed. Finally, the question asks candidates to discuss what elements are required to be proven to make such a redress claim. This was a good question choice for candidates who had revised this area well. Candidates who were less familiar with this Act struggled to provide sufficient detail in their answers.

**Q3** Two candidates chose to answer this question with 2 – 4 marks being awarded.

This question focused on the legal requirements relating to samples and models under the Consumer Rights Act 2015. It was disappointing to see that candidates struggled to outline the basic requirements under the Act and the answers provided to this question lacked detail. The Consumer Rights Act 2015 is an important part of the syllabus and candidates preparing for the Unit 1 examination should ensure they have a good knowledge of this area.

**Q4** Eight candidates elected to answer this question with marks achieved ranging between 4 and 8.

This question asked candidates to differentiate between the civil and criminal jurisdictions by providing examples and discussing the different purposes of civil and criminal law. The question also asked candidates to briefly describe the different burdens of proof. Candidates who answered each part of the question achieved higher marks. The differences between civil and criminal law are a detailed area of knowledge for the Unit 1 syllabus and candidates that were familiar with the differences obtained good marks for this question.

**Q5** This question was selected by four candidates. Marks awarded ranged from 4 to 5.

Candidates could have achieved full marks for part (a) of this question by discussing the legal requirement to have an enforcement policy, including requirements under the Regulators' Code 2014. Most candidates provided good definitions of proportionality and necessity in part (b) of this question but didn't clearly explain how these concepts relate to enforcement policies.

**Q6** This question was answered by all nine candidates. Marks ranged from 5 – 9 and there were some excellent answers provided to this question.

This question was similar to the famous case of *Carlill v Carbolic Smoke Ball Co* and most candidates identified this. Some candidates provided answers that went beyond the question set and therefore wasted valuable time discussing areas of law that were outside the scope of the question and the Unit 1 syllabus. Candidates should ensure that they carefully read the question and focus on answering the question set, to maximise their marks. Really strong answers discussed the difference between depositing money in the bank and provided case law to support their discussion.

## **Section B**

**Q7** Seven candidates selected to answer this question and the marks awarded ranged from 4 - 15 marks.

This question asked candidates to apply the Consumer Rights Act 2015, contract law and the law of misrepresentation to the scenario. The scenario was based upon the facts of *Pendragon v Coom* [2021]. To achieve high marks in a scenario question, it is important that candidates answer each legal element in detail and take a methodical approach to the scenario, to maximise the marks obtained. Some candidates talked in detail about the Consumer Protection from Unfair Trading Regulations 2008 and how they would apply to the scenario, which is not what the question asked and therefore attracted no marks.

Strong answers required a discussion about whether the terms and conditions were incorporated and unfair terms within the contract, such as attempting to bind a consumer to terms they have not seen. The scenario then

required a discussion about whether the purchase of the dog was considered to be a goods contract, and the relevant rights such as the requirement for goods to be of a satisfactory quality under Section 9 of the Consumer Rights Act 2015 needed to be discussed. A discussion of the legal rights and remedies that would apply was

needed, including the duty to mitigate losses, whether a short term right to reject should have been accepted and whether Denise was able to claim damages for ongoing costs. Exploring issues such as the practical challenges of some of the remedies offered under the Consumer Rights Act 2015 would also have gained marks in this question. Finally, a discussion about any representations made and whether misrepresentation had taken place was also required to maximise the marks on offer for this question.

**Q8** This question was answered by six candidates and the marks ranged from 10 – 23 out of 35.

Writing advice letters to businesses is a common activity undertaken by Trading Standards professionals. This question asked candidates to write an advice letter to a new clothes business, focusing on the legal rights in part (a) and the remedies and situations if a consumer changes their mind in part (b).

For part (a) marks were awarded to candidates who provided their answer in a letter format and provided information about rights such as goods being of a satisfactory quality, fitness for the purpose made known to the seller, description of the goods, pre-contract information and contract law etc.

For part (b), candidates needed to discuss the remedies such as the short-term right to reject, repair and replacement rights, right to a price reduction or final right to reject and also damages for breaches of contract. Candidates needed to also discuss the legal position where a consumer changes their mind and the position if the business has a returns policy.

**Q9** Four candidates choose to answer this question.

This question assessed the candidate's knowledge of contract law, the law of negligence/delict, rights and remedies relating to services and unfair terms and notices under the Consumer Rights Act 2015.

Candidates who achieved good marks for this question took a methodical approach to each part of the scenario. One way of doing this would be to separate out the car from the eyebrow wax. For the car, a discussion about issues such as the contract formation, consumer notices and incorporation of contract terms, supported by relevant case law would have been needed. Also, a discussion about unfair terms such as the prohibition on limiting liability for death and personal injury and restricting rights under the Consumer Rights Act 2015, relating to the provision of services. A discussion about negligence/delict was also required.

For the eyebrow wax part of the scenario, a strong answer would discuss the legal rights relating to services being provided using reasonable care and skill and the reasonable price requirements and whether they would apply, particularly because Charlie has paid for the service. A discussion about the remedies available for any breaches was also required. Some candidates spent a large amount of time discussing pricing legislation and another discussed repairing or replacing the eyebrows. Candidates need to ensure that they are answering the question set and that they consider whether they are discussing a goods, services or digital content contract when applying Part 1 of the Consumer Rights Act 2015.

**Q10** This question was answered by one candidate.

This question was divided into three parts and provided an opportunity for candidates to demonstrate their knowledge of unfair terms in consumer contracts.

Part (a) required a discussion of the prohibited terms (blacklisted terms) such as restricting any rights and remedies set out in Part 1 of the Consumer Rights Act 2015 or restricting liability for death or personal injury for negligence caused by the trader. The grey list then needed to be discussed and explained, to demonstrate that the candidate understood that terms on the grey list are more likely to be unfair but are not automatically unfair and that the list is non-exhaustive. Also, a discussion of terms that do not comply with the fairness test was needed, and all of these different controls on terms needed to be supported with examples, to maximise the marks awarded in this part of the question.

It is a common misconception that an unfair term in a contract will bring a contract to an end. Part (b) of the question tested candidates' knowledge that unfair terms are not binding on the consumer, unless they wish to rely on the term but the rest of the contract will still continue to have effect, as far as practicable, in every other respect.

Finally, part (c) of the question asked candidates to demonstrate their understanding of how regulators such as Trading Standards can tackle unfair terms in consumer contracts and who the regulators are. Good answers to this part of the question required a discussion of who the regulators are, such as Trading Standards and the Competition and Markets Authority. Candidates would then have needed to discuss injunctive action and civil enforcement under Part 8 of the Enterprise Act 2002.