

Examiner's report

CTSI Professional Competency Framework

Stage 1: Unit 2 Business and Consumer Legal Framework Examiner's Report November 2019

General

Many of the answer books had no pre-punched holes and extra pages were merely placed inside the answer books, not secured by treasury tags.

There were 21 scripts submitted for marking and only two failures. Whilst this was not good for the people who failed, students had obviously prepared well for the exam and there were 2 marks 70% or above, having 20 achieve a pass mark is particularly good for the profession and for those who passed, of course. Today's students have to commit to work, family and study. Always a difficult balancing act!

In statistical terms there were
4 students with marks 40-49%,
6 students 50-59%
7 students 60-69%
2 students 70-79 and
2 below 40%

For part A the most popular questions were 1,2,3 and 6. Only 2 attempting q.5.

Part B had similar popularities with a roughly even split between 7,8 and 10 only 2 attempting the perceived more difficult Q9, on the subject of adult care/vulnerable people. Q8 on Primary Authority was the most popular, as 18 answered this question, most of them quite well.

Section A

Q1 The question on the Regulators' Code, predictably, was well answered by most with a range of between 2 and 10 marks.

I expected most students to be able to state what the purpose of the code was about, then be able to state what the 6 principles were, but more importantly what they meant in practical terms to regulatory compliance officers. One diligent person scored a perfect 10 for this.

Q2 The range of marks for this question 4^{1/2} to 8^{1/2} reflected the general knowledge on business entities exhibited by the candidates. Most realised that Sole Trader, Partnership and Limited company would be the preferred options with a variety giving a preference for partnership with its flexibility and ability to draw up an agreement, some mentioned limited liability partnerships but usually significant sums are initially put in by the partners and this was not a preferred option. Those that chose to recommend limited company did so with the caveat that members would protect their own assets. If students gave the benefits and pitfalls of each type of entity then they achieved marks. It would be unlikely that a couple of local residents would have the £50,000 necessary to set up a plc and I did not see this as a viable option for a beauty business. Likewise, I did not expect to see Cooperatives or community interest companies in this case and, pleased to note, no one chose this as a viable option.

Q3 The question on risk assessment had a range of marks between 3^{1/2} to 8^{1/2}. Those that answered had at least a basic knowledge of why TSS use risk assessment as a way of maximising the limited

resources and limited numbers of local authority officers. Many linked it back to the Hampton and Macrory reviews and explained that by using risk assessment, officers can visit those premises that show the biggest risk. Most using risk to prioritise the premises to visit most often, this can be linked in with the IOM to provide relevant information. One or two students gave practical examples, a couple showing tables with hazard on one axis and risk of harm on the other.

Q4 Only 6 people answered this question. Because of this marks ranged between 2-7. It was about partner organisations such as the police, HMRC, AHPA et al. A couple chose the police and how they share intelligence, provide back-up when TSS serve warrants, use police cadets for underage test purchases, police serve fixed penalty notices when carrying out joint under age operations, etc. It gave an option for those who were involved in animal health to demonstrate the support by AHPA or those that work in ports authorities the cooperation with HMRC.

Q5 Codes of practice have been around a long time and their popularity is ever increasing at the present time, with Check-a-trade, Which (Consumers Association), CTSI and many other trade associations. They can provide consumer confidence, have a range of options to achieve redress including ADR. They can be very responsive to changes in the law, whereas the law itself can take a minimum of 40 days to enact, or sometimes extend to years for statutes. Codes are usually written by experts in their field and can lay down a code of conduct to which all members adhere. The down side is that they can be a member's club to which they pay lip service but little active participation. The only means of punishment for not adhering to the code would be to expel those not complying. Those who do not sign up to the code can undercut those that do leading to unfair competition.

Q6 The various enforcement options available are many and various and in the main this was well answered marks ranging from 0 to 7. It can start with simple face to face advice, written advice, directing a trader to your own website or Business Companion, engaging with a Primary Authority agreement for targeted assured advice. Training programmes can be given some authorities making this a fixture of compliance (some LA's charging for this option). Written compliance or improvement orders such as those issued under the Weights and Measures Act. Where advice and guidance may not work or warnings have previously been given, fixed penalty notices can be used, then the injunctive route under the Enterprise Act 2008, a simple caution and finally prosecution.

Section B

Q7 Self-regulation or voluntary controls was a popular question reasonably well answered with marks ranging from 8 to 23. They are controls established, mainly by private sector bodies and can include what are termed industry or consensus standards, they only apply to those organisations who sign up to them. A mandatory standard is a standard that requires compliance because of a government statute or regulation, an organization's internal policy, or contractual requirement. Failure to comply with a governmental mandatory standard usually carries a sanction, such as civil or criminal penalties. Non-prescribed voluntary industry codes of conduct, are essentially self-regulation and set out specific standards of conduct for an industry; including how to deal with its members and customers. These codes only apply to those who sign up to them.

Effective codes potentially deliver increased consumer protection and reduced regulatory burdens for business. To achieve this, they must be well designed, effectively implemented and properly enforced.

Codes of practice are often produced to use alongside legislation. They provide guidance for practitioners. Many have statutory force which means that practitioners have a legal duty to have regard of it when carrying out their duties.

Examples include Mental Health Act, Code of Practice and the Police and Criminal Evidence Act Code of Practice. Voluntary standards are less complicated and cumbersome than introducing new legislation.

Lower costs to introduce and trade enforces them, not the state. They can reduce the burdens on traders who are trading fairly.

Much quicker and responsive to change than new law, they can have a wider range of outcomes than criminal sanctions. They are put together by industry specialist and can meet their and the consumers' needs. However, not all traders will comply and are there any sanctions within codes of practice for non-compliance?

Codes can be cheaper for business, flexible, to suit differing sectors. There can be a problem for code followers if some do not join. They can benefit from sector compliance whilst they undercut and do not comply.

We will still need enforcers for those that don't comply. By reducing controls, it reduces the need for Regulators to control the sector, hence fewer regulators required. This reduces the cost to government, both central and local.

CTSI codes of practice have a 2-stage process for approval and audit checks to ensure compliance. Must have a robust ADR scheme for solving disputes. There is an audit function but no sanction other than ejection from the scheme.

Q8 As I said previously the most popular question. Marks ranging from 11 to 28, the majority scoring 20 or more, which from an exam technique point of view, is a great way to be halfway to a pass mark in the overall exam. Most authorities have one or more PA agreements and so many students will be aware of them and will also have been on training courses, or read the notes on the topic.

Some of the points, but not all, include: It is a statutory Partnership through BEIS but run by the department for OPSS: The Office for Product Safety and Standards. Businesses can adopt any local authority as their Primary Authority. The businesses can set up a formal relationship for tailored, assured advice, guidance and assistance; there will be a cost agreed between the parties based upon the time and assistance required. Other local authorities must consult that Primary Authority if any problems arise. The relationship is on a statutory basis and involves a commitment from the business. PA advice is "assured," business can have confidence that it is compliant and that another regulator can't require it to comply in a different way. An inspection plan can be used to improve the focus of local programmed inspections, test purchases and sampling activity. Local intelligence is fed back to the Primary Authority providing a vital resource for the business.

It allows collection of local intelligence & coordination of enforcement responses. Both will have a single point of contact. Business can keep up to date with new legislation and training for staff can be provided. R&D can take place with the knowledge that advice can be given on safety, contents and labelling to determine if a new product is viable at an early stage and also that money is not wasted, as the product development team gets specialist advice.

PA is notified of all enforcement actions & must respond within 5 working days. PA can stop enforcement action in many circumstances. Note: Hull CC v Newcastle CC, re Greggs.

If, for example, there are many areas of legislation covered and the business concerned has numerous outlets with a multi-million-pound turnover, then the business can ask more than one authority to cover different aspects of law, as the workload may be deemed too great for one authority to handle. A small business, if it cannot afford a Direct Primary Authority Partnership alternatively, can belong to a trade association (or other type of group such as a franchise) to benefit from a co-ordinated primary authority. In this case, the Primary Authority Advice is still from the primary authority, but provided via the trade association, and tailored to the general needs of its members.

The downside of PA is that small local authorities do not have the staff, nor the specialists to attract large businesses. Small and start-up businesses may suffer as PAs may offer a limited service for example half an hour free advice. Whereas a free service may be able to put them on the right path.

As the Greggs and Whirlpool cases show PAs do not always get it 100% right and it highlights the pitfalls.

By relying totally on PA advice this means businesses can do away with their own specialist teams and, as long as they follow the advice issued by the PA, they have that "get out of jail free card."

Q9 This question, along with question 5, was the least popular on the paper only 2 people answering, scoring 17 and 20 respectively.

There were two approaches used by the two students. One described the problems encountered by vulnerable people in two scenarios highlighting the modus operandi employed by criminals in each and how these were countered by local authority enforcement staff. The Care Act 2014 and in Scotland, The Adult Support and Protection (Scotland) Act 2007, place a responsibility on local authorities. If a Local Authority suspects an adult is at risk, they must make, or cause to be made, whatever enquiries necessary to enable them to decide whether any action should be taken and, if so, what and by whom. They seek to protect and benefit adults at risk of being harmed. The Act requires councils and a range of public bodies to work together to support and protect adults who are unable to safeguard themselves, their property and their rights:

It is often highlighted to TSS by itinerant traders and scam artists carrying out work on properties that is unnecessary. Often charging excessive amounts for poor work or work that is not carried out. Local authorities are encouraged to involve a multi-disciplinary agency approach if it is suspected that an adult in its area has needs for care and support and is experiencing, or is at risk of, abuse or neglect, and as a result of those needs is unable to protect himself or herself against the abuse or neglect or the risk of it. LA's can use a variety of advice, phone blockers, community approaches by organisations, "No cold calling" zones and enforcement action by local regulatory authorities linked in with action by banks and building societies, tipping off TSS, when "old people" are accompanied by itinerant traders to take money out of their accounts.

Abuse" includes financial abuse; and for that purpose, "financial abuse" includes—having money or other property stolen, being defrauded, being put under pressure in relation to money or other property, and having money or other property misused.

One of the biggest problems over many years is the targeting of vulnerable people

Being able to highlight the modus operandi of these people and how they target the properties and then how they can escalate their activities was expected in this answer. Many local authorities have policies in place and students could have drawn on these for examples.

There are so many scams in operation now whether that be pensions or dating websites, insurance and investment fraud, letters and leaflets offering 'alleged' free prizes. Students could have highlighted any of these and more.

Q10 Alongside being one of the most popular questions on the paper it was also the source of the best marks ranging from 20 to 28. It was pleasing to read that candidates understood the various issues and the advantages and disadvantages of local regional and national trading standards services.

Some, but not all of the answers included: Local authorities can provide services that fulfil local needs, priorities can be set with local businesses, councillors who are elected to represent the area and local enforcement can highlight and target the problems. All will be able to draw on local knowledge and history to help and assist with targeting and also to help businesses to thrive and grow. Attracting new businesses is often difficult for small geographical areas and in terms of providing Primary Authority Advice and guidance this could be equally difficult with a small team of generalists who have not time to focus on specific legislative areas. Resources can be limited, in terms of staff; to employ intelligence analysts, Financial tracing experts, qualified and support staff, but also having the time to enhance their knowledge to provide specific advice on safety, metrology, Food law etc. to larger businesses that may seek a PA arrangement. They therefore are doubly disadvantaged, as failing to attract PA also reduces their ability to gain any extra revenue. Often local authorities have to be very specific in their enforcement policy, some refusing to look at complaints, or carry out routine inspections because of resource shortages.

Having a Regional service implies that there will be a larger service having proportionate access to more funds. So, what is a disadvantage to small authorities will not be to larger Regional areas. They can have specialists and hence attract PA businesses. They would be able to target better using the full range of intelligence aspects available. Having a regional centre will mean that duplication of resources will be prevented, as there will be a central hub with metrology and possible testing facilities. There are obvious

economies of scale. Being able to carry out screening tests saves costs, as there is not a need to send samples for detailed analysis, unless they fail local screening.

Disadvantages can mean losing connection with problems in local areas. The Regional centre has to be based in one area to maintain the efficiency of regionalisation; hence some areas may be missed or get reduced cover. Local knowledge can be lost and there can be reduced information from local sources. Some areas may feel disadvantaged being away from the centre of operations and even in regions resources have to be used carefully and visits risk assessed. National TSS would mean a central service with standard policies to which all officers would comply, one interpretation of any aspect of law, therefore consistency, which is often highlighted as a down side of Local authorities. However, would this also mean lost local knowledge, travelling by officers to outlying regions. This means lost time and some out of the way places may not receive much in the way of help or enforcement. There is a dilemma with a central service in that although they can afford specialists and intelligence analysts and forensic investigators, they are often isolated in one central city although they can have satellite offices like moving to regions, local knowledge is lost and local priorities will be lost as well.