



GCE AS MARKING SCHEME

SUMMER 2024

**AS
LAW – COMPONENT 1
B150U10-1**

About this marking scheme

The purpose of this marking scheme is to provide teachers, learners, and other interested parties, with an understanding of the assessment criteria used to assess this specific assessment.

This marking scheme reflects the criteria by which this assessment was marked in a live series and was finalised following detailed discussion at an examiners' conference. A team of qualified examiners were trained specifically in the application of this marking scheme. The aim of the conference was to ensure that the marking scheme was interpreted and applied in the same way by all examiners. It may not be possible, or appropriate, to capture every variation that a candidate may present in their responses within this marking scheme. However, during the training conference, examiners were guided in using their professional judgement to credit alternative valid responses as instructed by the document, and through reviewing exemplar responses.

Without the benefit of participation in the examiners' conference, teachers, learners and other users, may have different views on certain matters of detail or interpretation. Therefore, it is strongly recommended that this marking scheme is used alongside other guidance, such as published exemplar materials or Guidance for Teaching. This marking scheme is final and will not be changed, unless in the event that a clear error is identified, as it reflects the criteria used to assess candidate responses during the live series.

EDUQAS GCE AS LAW

COMPONENT 1 - THE NATURE OF LAW AND THE ENGLISH LEGAL SYSTEM

SUMMER 2024 MARK SCHEME

Marking guidance for examiners

Summary of assessment objectives for Component 1

The questions in Section A and Section B assess all three assessment objectives - AO1, AO2 and AO3. The assessment objectives focus on the ability to demonstrate knowledge and understanding of legal rules and principles; the ability to apply legal rules and principles to given scenarios in order to present a legal argument using appropriate terminology, and the ability to analyse and evaluate legal rules, principles and concepts.

The structure of the mark scheme

The mark scheme for both Section A and Section B has two parts:

- indicative content which can be used to assess the quality of the specific response. The content is not prescriptive and candidates are not expected to mention all the material referred to. Examiners should seek to credit any further admissible evidence offered by the candidates.
- an assessment grid advising bands and associated marks that should be allocated to responses which demonstrate the characteristics needed in AO1, AO2 and AO3.

Stage 1 - Deciding on the band

Beginning at the lowest band, examiners should look at the learner's answer and check whether it matches the descriptor for that band. If the descriptor at the lowest band is satisfied, examiners should move up to the next band and repeat this process for each band until the descriptor matches the answer.

If an answer covers different aspects of different bands within the mark scheme, a 'best fit' approach should be adopted to decide on the band and then the learner's response should be used to decide on the mark within the band. For instance if a response is mainly in band 2 but with a limited amount of band 3 content, the answer would be placed in band 2, but the mark awarded would be close to the top of band 2 as a result of the band 3 content.

Examiners should not seek to mark candidates down as a result of small omissions in minor areas of an answer.

- The first stage for an examiner is to use both the indicative content and the assessment grid to decide the overall band.
- The second stage is to decide how firmly the characteristics expected for that band are displayed.
- Thirdly, a mark for the question is awarded.

Stage 2 - Deciding on the mark

During standardising (marking conference), detailed advice from the Principal Examiner on the qualities of each mark band will be given. Examiners will then receive examples of answers in each mark band that have been awarded a mark by the Principal Examiner.

Examiners should mark the examples and compare their marks with those of the Principal Examiner.

When marking, examiners can use these examples to decide whether a learner's response is of a superior, inferior or comparable standard to the example. Examiners are reminded of the need to revisit the answer as they apply the mark scheme in order to confirm that the band and the mark allocated is appropriate to the response provided.

Indicative content is also provided for banded mark schemes. Indicative content is not exhaustive, and any other valid points must be credited. In order to reach the highest bands of the mark scheme a learner need not cover all of the points mentioned in the indicative content but must meet the requirements of the highest mark band. Where a response is not creditworthy, that is contains nothing of any significance to the mark scheme, or where no response has been provided, no marks should be awarded.

Section A

1. Explain what is meant by the rule of law.

[6]

Indicative Content

NOTE: The content is not prescriptive, and candidates are not expected to mention all the material mentioned below. Each answer will be assessed on its merits according to the assessment grid and indicative content. Examiners should seek to credit any further admissible evidence offered by candidates.

In explaining the parliamentary controls, candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles underlying the constitution and the rule of law. In demonstrating this knowledge and understanding, candidates are required to give an answer which is focused on the specific nature of the question, the rule of law and not give a general answer on the constitution.

Candidates would not be expected to discuss all these controls for 6 marks, but a range would be required. The response might consider issues such as:

- **UK constitution** has three arms: separation of powers, parliamentary sovereignty and the rule of law.
- **Rule of Law** – AV Dicey – there are three aspects to the rule of law:
 - there is no punishment without breach.
 - everyone is equal before the law.
 - the constitution is the result of the ordinary law of the land.
- **Threats to the rule of law** – examples could include but not be limited to, citation of the Belmarsh detainees, the Black Spider memos.

Band	Marks	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles.
3	5-6	• Excellent knowledge and understanding of the English legal system and legal rules and principles relating to the rule of law. • Response is clear, detailed and fully developed.
2	3-4	• Good knowledge and understanding of the English legal system and legal rules and principles relating to the rule of law. • Response is generally clear, detailed and developed.
1	1-2	• Basic knowledge and understanding of the English legal system and legal rules and principles relating to the rule of law. • Response includes minimal detail.
	0	Response not creditworthy or not attempted.

2. Explain the role of the Law Commission.

[6]

Indicative Content

NOTE: The content is not prescriptive and candidates are not expected to mention all the material mentioned below. Each answer will be assessed on its merits according to the assessment grid and indicative content. Examiners should seek to credit any further admissible evidence offered by candidates.

In explaining how judges can influence law reform, candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles underlying law reform. In demonstrating this knowledge and understanding, candidates are required to give an answer which is focused on the specific nature of the question, judicial influence on law reform and not other aspects of law reform.

The response might consider issues such as:

The Law Commission is the only full-time law reform body in the UK and it was established under the Law Commission Act 1965.

The Law Commission comprises a chairman, who is a High Court judge and four other Law Commissioners who are all legal professionals. The Commission is supported by research staff and Draftsmen who support with the drafting of Bills. The Law Commission is given projects by the government and the conducts the following process:

- **Research** – the Commission will research the area of law that is thought to be in need of reform.
- **Consultation** – the Commission will then publish a Consultation which will be open to the public and any interested parties to comment on or suggest amendments.
- **Report** – the Commission will draw up a Report collecting the views and comments from the Consultation.
- **Draft Bill** – the report will then be written up as a Draft Bill which is ready to present to Parliament. It is then up to Parliament to decide whether or not to take the Bill through to become an Act.

The Law Commission's role, under s3 of the Law Commission Act is "to keep under review all of the law". It can do this in one of four ways:

- **Create** – This is where completely new laws are created, either in response to public demand or because of pressure by another group.
- **Consolidate** - Consolidation brings together successive statutes on the same subject.
- **Codification** - Codification brings together all the rules into one statute to increase certainty.
- **Repeal** - This is where old and obsolete laws are taken off the statute books.

Band	Marks	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles.
3	5-6	• Excellent knowledge and understanding of the English legal system and legal rules and principles relating to the Law Commission. • Response is clear, detailed and fully developed.
2	3-4	• Good knowledge and understanding of the English legal system and legal rules and principles relating to the Law Commission. • Response is generally clear, detailed and developed.
1	1-2	• Basic knowledge and understanding of the English legal system and legal rules and principles relating to the Law Commission. • Response includes minimal detail.
	0	Response not creditworthy or not attempted.

Question 3

Read the text below and answer part (a).

“A rule as to precedent (which any court lays down for itself) is not a rule of law at all. It is simply a practice or usage laid down by the court itself for its own guidance: and, as such, the successors of that court can alter that practice or amend it or set up other guidelines, just as the House of Lords did in 1966”.

Source: Lord Denning in *Davis v Johnson* (1979)

(a) Explain the use of the Practice Statement 1966.

[6]

Indicative Content

NOTE: The content is not prescriptive, and candidates are not expected to mention all the material mentioned below. Each answer will be assessed on its merits according to the assessment grid and indicative content. Examiners should seek to credit any further admissible evidence offered by candidates.

In explaining the use of the Practice Statement 1966, candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles underlying the Practice Statement. In demonstrating this knowledge and understanding, candidates are required to give an answer which focuses on the Practice Statement only and not other tools relating to judicial precedent.

The response might consider issues such as:

- In the case of Herrington v British Railways Board, it was decided that the House of Lords as it was then, was bound by its own decisions and could not depart from previous decisions under any circumstances. This was to ensure certainty in the law.
- However, in 1966 the Lord Chancellor, Lord Gardiner, introduced a Practice Statement, allowing the House of Lords to depart from its own decisions “when it appears right to do so”. This introduces an element of flexibility for the highest court in the UK and enables the law to keep up with social change and attitudes.
- Examples of the use of the Practice Statement: Pepper v Hart, C v DPP, R v Shivpuri and Conway v Rimmer.
- The Practice Statement has limited use because the Supreme Court hears so few cases every year; however, this has an advantage because it limits the risk of judicial law making.

Band	Marks	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles.
3	5-6	• Excellent knowledge and understanding of the English legal system and legal rules and principles relating to the use of the Practice Statement 1966 by the Supreme Court. • Response is clear, detailed and fully developed.
2	3-4	• Good knowledge and understanding of the English legal system and legal rules and principles relating to the use of the Practice Statement 1966 by the Supreme Court. • Response is generally clear, detailed and developed.
1	1-2	• Basic knowledge and understanding of the English legal system and legal rules and principles relating to the use of the Practice Statement 1966 by the Supreme Court. • Response includes minimal detail.
	0	Response not creditworthy or not attempted.

In R v Almas, a (fictitious) case brought before the House of Lords in 1992, a defendant was convicted of an offence of being ineligible to vote when voting in a general election.

The suspect knew that he was not on the electoral register and could not vote. Instead, he gave his father's name to polling station staff and was given a ballot paper and cast his vote.

He fully accepted that he had voted using his father's name and was sentenced to a 24-month rehabilitation activity programme and ordered to pay £620 in costs.

In 2023, a case came before the Court of Appeal concerning Jamil who was suspected of being ineligible to vote when he turned up at the polling station to cast his vote in a local election. Jamil has recently moved to the area after graduating from university and has not yet updated his details on the electoral register.

The prosecution claimed that on the basis of the (fictitious) House of Lords decision in R v Almas that Jamil is guilty of an offence. Jamil's case has now reached the Court of Appeal and they are considering the options available to them.

- (b) **Using your knowledge of judicial precedent, advise the Court of Appeal as to the possible outcomes for Jamil's case.** [18]

Indicative Content

NOTE: The content is not prescriptive, and candidates are not expected to mention all the material mentioned below. Each answer will be assessed on its merits according to the assessment grid and indicative content. Examiners should seek to credit any further admissible evidence offered by candidates.

This is an extended response question. In order to achieve the highest marks, a response must construct and develop a sustained line of reasoning which is coherent, relevant, substantiated and logically structured.

The response might consider issues such as:

- Operation of precedent within the court hierarchy. Position of Jamil's case in the Court of Appeal and the precedent case in the Supreme Court. Ratio – offence of ineligibility to vote if voting when not on the electoral roll.
- **Follow** – if a judge follows the R v Almas case, Jamil's case will be interpreted in the same way provided the judge feels the cases are sufficiently similar. Court of Appeal is bound by the Supreme Court under the ordinary operation of precedent.
- **Distinguish** – Court of Appeal could argue that Jamil's case is different in some way and reach a different conclusion as in Balfour v Balfour and Merritt v Merrit. In this case, the judges could argue that Jamil was voting in a local election, not a general election and that there was no intention to impersonate or vote fraudulently. He had merely forgotten to change his address after leaving university.
- **Overruling** – As the Court of Appeal is below the Supreme Court, Jamil's case would need to be appealed to the Supreme Court for the R v Almas decision to be overruled using the 1966 Practice Statement. Credit for examples of when this has been used, for example, R v R (1991), Pepper v Hart.
- **Reversing** – Not available as it is not the R v Almas case on appeal.
- Each of the avoidance techniques would need to be explained in detail, with some supporting cases and applied to the scenario. Credit will be given for any logical application so long as it makes sense within the meaning of the avoidance technique.

Band	Marks	AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology.
4	15-18	• Excellent application of legal rules and principles to Jamil's situation. • Excellent presentation of a legal argument using appropriate legal terminology, case law and other legal authorities relating to judicial precedent. The legal argument is detailed, fully developed and persuasive.
3	10-14	• Good application of legal rules and principles to Jamil's situation. • Good presentation of a legal argument using appropriate legal terminology, case law and other legal authorities relating to judicial precedent. The legal argument is generally detailed, fully developed and persuasive.
2	5-9	• Adequate application of legal rules and principles to Jamil's situation. • Adequate presentation of a legal argument using some appropriate legal terminology, case law and other legal authorities relating to judicial precedent. The legal argument includes some detail which is developed in places.
1	1-4	• Basic application of legal rules and principles to Jamil's situation. • Basic presentation of a legal argument using minimal legal terminology relating to judicial precedent. The legal argument includes minimal detail.
	0	Response not creditworthy or not attempted.

Question 4

Read the text below and answer part (a).

“Statutory Interpretation is an exercise which requires the court to identify the meaning borne by the words in the particular context”.

Source: Lord Nicholls

(a) Explain the literal and golden rules of statutory interpretation. [6]

Indicative Content

NOTE: The content is not prescriptive, and candidates are not expected to mention all the material mentioned below. Each answer will be assessed on its merits according to the assessment grid and indicative content. Examiners should seek to credit any further admissible evidence offered by candidates.

In explaining the literal and golden rules of statutory interpretation, candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles underlying statutory interpretation. In demonstrating this knowledge and understanding, candidates are required to give an answer which is focused on the literal and golden rules only and not other rules of statutory interpretation.

The response might consider issues such as:

Literal – under this rule, the courts will give words their plain, ordinary meaning, even if the result is not very sensible. It has been used in such cases as Whiteley v Chappel, where the defendant impersonated a dead person for the purposes of voting.

Golden – under this rule, judges will start by looking at the literal rule, but the court is then allowed to avoid an interpretation which would lead to an absurd result.

There are two views to the Golden Rule, the narrow approach and the broad approach:

The narrow approach allows the courts to choose between the possible meanings of a word or phrase – this was seen in the case of Adler v George where the term ‘in the vicinity of’ was also deemed to include ‘in’ or ‘in the vicinity of’.

The wider application of the Golden Rule is where the words only have one clear meaning, but to use that interpretation would lead to a repugnant situation. This was seen in Re Sigsworth where it was deemed absurd for a son who murdered his mother to benefit from her estate when she died intestate.

Credit will be given for any case that is used to support the definition of the literal and golden rules.

Band	Marks	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles.
3	5-6	• Excellent knowledge and understanding of the English legal system and legal rules and principles relating to the literal and golden rules of statutory interpretation. • Response is clear, detailed and fully developed.
2	3-4	• Good knowledge and understanding of the English legal system and legal rules and principles relating to the literal and golden rules of statutory interpretation. • Response is generally clear, detailed and developed.
1	1-2	• Basic knowledge and understanding of the English legal system and legal rules and principles relating to the literal and golden rules of statutory interpretation. • Response includes minimal detail.
	0	Response not creditworthy or not attempted.

Read the fictitious statute and the scenario below and answer part (b).

The Smoke-Free Premises (fictitious) Regulations 2023

These Regulations were passed in response to research that shows smoking is still the main cause of premature death in the UK.

Section 1:

- (1) All public places and workplaces should be smoke-free.
- (2) The premises are smoke-free by virtue of s1 in those areas that are enclosed or substantially enclosed.

Verity is smoking a cigarette whilst supervising her two children in an outdoor play area.

Elijah works as a builder and is currently working on a new housing estate. He used to smoke cigarettes but has been told it is permissible to vape using an electronic cigarette if he is outside.

Glenn is a self-employed graphic designer who smokes a pipe. He sells business cards, leaflets and posters online, working out of a shed in his garden.

- (b) Using your knowledge of statutory interpretation, advise Verity, Elijah and Glenn as to whether their actions are lawful.** [18]

Indicative Content

NOTE: The content is not prescriptive, and candidates are not expected to mention all the material mentioned below. Each answer will be assessed on its merits according to the assessment grid and indicative content. Examiners should seek to credit any further admissible evidence offered by candidates.

This is an extended response question. In order to achieve the highest marks, a response must construct and develop a sustained line of reasoning which is coherent, relevant, substantiated and logically structured.

In advising Verity, Elijah and Glenn, candidates are expected to apply the full range of rules of statutory interpretation. In this case, candidates may apply the literal, golden and mischief rules as well as the purposive approach, to the given scenario in order to present a legal argument using legal terminology.

The response might consider issues such as:

- Candidates should identify and explain the four rules of statutory interpretation, with some case illustration to support.
 - **Literal Rule:** gives words the natural and grammatical meaning, even if the result is absurd – Whiteley v Chappel, Lees v Secretary of State, Fisher v Bell, London LNER v Berriman.
 - **Golden Rule:** allows words in a statute to be modified in order to avoid an absurdity or repugnant result – Sweet v Parsley, Adler v George, Re Sigsworth, R v Allen. Candidates should explain the narrow approach and the broad approach.
 - **Mischief Rule:** looks at the gap in the law Parliament intended to fill. Established in Heydon's Case. Used in Smith v Hughes, Royal College of Nursing v DHSS, Pepper v Hart.
 - **Purposive Approach:** looks at the 'spirit of the law' and what Parliament intended; favoured approach of interpretation of EU Law. Used in Magor v St Mellons, Quinaville, Jones v Tower Boot Company.
- Candidates will also be credited for making reference to other aids to interpretation, such as intrinsic aids (title, preamble, interpretation sections and rules of language) and extrinsic aids (dictionary, Hansard, international conventions).

In applying to Verity, Elijah and Glenn, candidates could identify that:

- Under the Literal Rule, Verity has committed an offence as she is smoking in a public place, the children's playground. However, literally speaking, the playground is outdoor and not substantially enclosed so would not be guilty. Elijah, as he is not literally creating 'smoke' by vaping, even though he is in his workplace, would not be guilty under the literal rule. Glenn is guilty of an offence as he is smoking in his workplace, his shed, which is presumably enclosed under s1(2).
- Under the Golden Rule, there may also be some discussion over what is meant by "smoke-free" – given that Elijah is vaping, and Glenn is smoking a pipe. Candidates may explore how absurd it may be to find Elijah guilty because he is vaping or indeed to find Glenn guilty if he is in his home. Candidates may explore ways of modifying the statute to avoid these absurd results that could centre around the number of people in the vicinity or the addition of the word 'cigarettes' somewhere in the statute.
- Under the Mischief Rule, it is clear from the preamble that the Regulations were passed in response to research that shows smoking is still the main cause of premature death in the UK. Therefore, Verity and Glenn could be guilty as they are smoking substances that could contribute to their premature death which goes against the gap that the law was created to fill.
- The purpose of the Regulations is to reduce the number of people smoking, so again Verity and Glenn go against this. Though looking at the 'spirit of the law', there is an argument to suggest that Elijah was vaping which is a form of smoking introduced to help people quit smoking and so is actually fulfilling the purpose of the statute by choosing to vape instead of smoke cigarettes.

Band	Marks	AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology.
4	15-18	• Excellent application of legal rules and principles to Verity, Elijah and Glenn's situation. • Excellent presentation of a legal argument using appropriate legal terminology, case law and other legal authorities relating to statutory interpretation. The legal argument is detailed, fully developed and persuasive.
3	10-14	• Good application of legal rules and principles to Verity, Elijah and Glenn's situation. • Good presentation of a legal argument using appropriate legal terminology, case law and other legal authorities relating to statutory interpretation. The legal argument is generally detailed, fully developed and persuasive.
2	5-9	• Adequate application of legal rules and principles to Verity, Elijah and Glenn's situation. • Adequate presentation of a legal argument using some appropriate legal terminology, case law and other legal authorities relating to statutory interpretation. The legal argument includes some detail which is developed in places.
1	1-4	• Basic application of legal rules and principles to Verity, Elijah and Glenn's situation. • Basic presentation of a legal argument using minimal legal terminology relating to statutory interpretation. The legal argument includes minimal detail.
	0	Response not creditworthy or not attempted.

Section B

- 5 (a) Explain the main types of Alternative Dispute Resolution (ADR) that can be used to resolve a civil dispute. [6]

Indicative Content

NOTE: The content is not prescriptive, and candidates are not expected to mention all the material mentioned below. Each answer will be assessed on its merits according to the assessment grid and indicative content. Examiners should seek to credit any further admissible evidence offered by candidates.

In explaining the main types of ADR, candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles underlying sentencing. In demonstrating this knowledge and understanding, candidates are required to give a brief explanation of the key types of ADR and tribunals would not be considered a type of Alternative Dispute Resolution.

The response might consider issues such as:

- **Negotiation** – this is where the parties should try and resolve the dispute between themselves. Solicitors can be used, but where they are, this means that there will be a cost element involved.
- **Mediation** – this is where a neutral third party helps the parties to resolve their dispute and reach a compromise solution. This is often used in family cases where the custody of children needs to be decided. Since 2013, it has become compulsory for all divorcing couples to attend a Mediation Information Assessment Meeting before they are permitted to take their case to court. The only exception is if there are issues surrounding domestic abuse. Mediation is also used for neighbour disputes such as noise and boundary issues.
- **Conciliation** – this is where a neutral third party can take a more active role and suggest grounds for compromise and a possible basis for settlement. Conciliation is often carried out in employment disputes by using agencies such as ACAS to help resolve disputes.
- **Arbitration** – this is governed by the Arbitration Act 1996 and is the voluntary submission of the dispute to the arbiters to be resolved through an arbitration hearing, the time, date and location of which can be determined by the parties themselves. The agreement to arbitrate is often conducted beforehand via a Scott v Avery clause – this means the parties have no right to go to court unless there is a procedural error. The decision made in the arbitration hearing is called an award and is binding.

It would be expected that at least three types of ADR be discussed for the full range of marks.

Band	Marks	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles.
3	5-6	• Excellent knowledge and understanding of the English legal system and legal rules and principles relating to ADR. • Response is clear, detailed and fully developed.
2	3-4	• Good knowledge and understanding of the English legal system and legal rules and principles relating to ADR. • Response is generally clear, detailed and developed.
1	1-2	• Basic knowledge and understanding of the English legal system and legal rules and principles relating to ADR. • Response includes minimal detail.
	0	Response not creditworthy or not attempted.

5 (b) Analyse and evaluate the effectiveness of the main methods of Alternative Dispute Resolution (ADR). [18]

Indicative Content

NOTE: The content is not prescriptive, and candidates are not expected to mention all the material mentioned below. Each answer will be assessed on its merits according to the assessment grid and indicative content. Examiners should seek to credit any further admissible evidence offered by candidates.

This is an extended response question where candidates are expected to draw together different areas of knowledge, skills and/or understanding from across the relevant specification content. In order to achieve the highest marks, candidates must construct and develop a sustained line of reasoning which is coherent, relevant, substantiated and logically structured. They must also demonstrate their ability to draw together details from the types of ADR and their effectiveness.

Candidates will offer an analysis and evaluation of the legal rules, principles and concepts in order to evaluate the effectiveness of Alternative Dispute Resolution.

In order to fully analyse and evaluate the issue, the response might consider issues such as:

An explanation of the concept of ADR, why it is more favourable to court – cheaper, less formal, less intimidating, maintain relationships, avoids adversarial conflict of the courts. The use of ADR was encouraged by the 1998 Woolf Reforms and the subsequent Civil Procedure Rules.

- **Negotiation:**
 - ✓ Completely private.
 - ✓ Rarely uses legal representatives.
 - ✗ Does not always guarantee a positive outcome for the claimant.
- **Mediation:**
 - ✓ Maintains relationships between parties who need to conduct further relations.
 - ✓ Can be conducted online using mediation services.
 - ✓ Most solicitors' firms have in-house mediation services that can be accessed by clients.
 - ✗ Does not always guarantee a positive outcome for the claimant.
 - ✗ It is seen as a compulsory step, rather than an alternative so is not always taken seriously by claimants.
 - ✗ Mediation is not necessarily conducted by a legal professional so there if there is a legal point, it may not be able to be resolved at mediation.
- **Conciliation:**
 - ✓ Conciliation is carried out in private.
 - ✓ Maintains a relationship between employer and employee to enable them to carry on doing business together.
 - ✗ Does not always guarantee a positive outcome for the claimant.
- **Arbitration:**
 - ✓ The form of ADR that most resembles a court hearing.
 - ✓ The arbitrator is usually an expert in the field of the arbitration hearing.
 - ✗ It is seen as a forced method of ADR, and many claimants do not realise they have agreed to arbitrate beforehand and are therefore not entitled to go to court.
 - ✗ Legal aid is not available for arbitration hearings.
 - ✗ Limited rights of appeal.

Credit will be given for any logical analysis and evaluation that links back to the effectiveness of each method of ADR. Candidates who consider the advantages and disadvantages of ADR in general terms will be unlikely to be able to reach the higher mark bands.

Band	Marks	AO3: Analyse and evaluate legal rules, principles and concepts.
4	15-18	• Excellent analysis of legal rules, principles and concepts relevant to the effectiveness of ADR. Analysis is detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding. • Excellent evaluation of the effectiveness of ADR, including a valid and substantiated judgement. • Excellent citation of supporting case law and legal authorities.
3	10-14	• Good analysis of legal rules, principles and concepts relevant to the effectiveness of ADR. Analysis is generally detailed with appropriate range of supporting evidence. • Good evaluation of the effectiveness of ADR, including a valid judgement. • Good citation of supporting case law and legal authorities.
2	5-9	• Adequate analysis of legal rules, principles and concepts relevant to the effectiveness of ADR. Analysis includes some detail with some supporting evidence. • Adequate evaluation of the effectiveness of ADR, including reference to a judgement. • Adequate citation of supporting case law and legal authorities.
1	1-4	• Basic analysis of legal rules, principles and concepts relevant to the effectiveness of ADR. Analysis includes minimal detail. • Basic evaluation of the effectiveness of ADR. • Basic citation of supporting case law and legal authorities.
	0	Response not creditworthy or not attempted.

6 (a) Explain the training of lay magistrates in England and Wales.

[6]

Indicative Content

NOTE: The content is not prescriptive, and candidates are not expected to mention all the material mentioned below. Each answer will be assessed on its merits according to the assessment grid and indicative content. Examiners should seek to credit any further admissible evidence offered by candidates.

In explaining the appointment and training of lay magistrates, candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles underlying lay magistrates. In demonstrating this knowledge and understanding, candidates are required to give an answer which is focused on the training of lay magistrates only and not other roles in the legal profession or other aspects of the appointment of magistrates.

The response might consider issues such as:

- Supervised by the Magisterial Committee of the Judicial College.
- Many stages of training including introductory training, mentoring schemes, appraisal processes, the keeping of a Personal Development Log and they all get allocated a mentor.

Candidates can talk about each of these stages in some detail, though the demands of this question will mean there won't be much scope for a lot of detail.

- After one year, the magistrate will undergo an appraisal to check if they have acquired the necessary skills. Any magistrate who has not satisfied the criteria will receive further training.

Band	Marks	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles.
3	5-6	• Excellent knowledge and understanding of the English legal system and legal rules and principles relating to the training of magistrates. • Response is clear, detailed and fully developed.
2	3-4	• Good knowledge and understanding of the English legal system and legal rules and principles relating to the training of magistrates. • Response is generally clear, detailed and developed.
1	1-2	• Basic knowledge and understanding of the English legal system and legal rules and principles relating to the training of magistrates. • Response includes minimal detail.
	0	Response not creditworthy or not attempted.

6 (b) Analyse and evaluate the advantages and disadvantages of lay magistrates.
[18]

Indicative Content

NOTE: The content is not prescriptive, and candidates are not expected to mention all the material mentioned below. Each answer will be assessed on its merits according to the assessment grid and indicative content. Examiners should seek to credit any further admissible evidence offered by candidates.

This is an extended response question where candidates are expected to draw together different areas of knowledge, skills and/or understanding from across the relevant specification content. In order to achieve the highest marks, candidates must construct and develop a sustained line of reasoning which is coherent, relevant, substantiated and logically structured. They must also demonstrate their ability to draw together details from areas including the advantages and disadvantages of magistrates, the extent to which it is representative of society and ideas for reform.

Candidates will offer an analysis and evaluation of the advantages and disadvantages of lay magistrates. In order to analyse and evaluate these aspects, candidates may make reference to current newsworthy issues and recent reports into the magistracy.

In order to fully analyse and evaluate the issue, the response might consider issues such as:

- Adverts are placed in local newspapers, community noticeboards and even on buses, in order to attract as wide a representation of society as possible.
- Diversity Statistics (April 2020) as published by The Ministry of Justice ([Statistics published on diversity in the magistracy \(magistrates-association.org.uk\)](https://magistrates-association.org.uk/statistics))
 - 56% of magistrates are female.
 - 13% of magistrates are from BAME backgrounds.
 - 49% of magistrates are aged 60 or over.
 - 1% of magistrates are aged 30 or under.
- The BAME statistic is up from 8% in 2014 so there has been some progress in improving diversity.
- Recognition that more needs to be done particularly in terms of attracting younger people and those from all social backgrounds to apply to become magistrates. This is because magistrates are often criticised for being 'middle aged, middle class and middle minded'.
- There are often inconsistencies in sentencing across the country, so this suggests that maybe the training is inadequate. Candidates may use statistics to support this.
- There are relatively few appeals from the Magistrates' Court which suggest that they usually come to the correct verdict and therefore receive adequate training. Candidates may use statistics to support this.
- The magistrates have the benefit of a legal clerk, who can advise them on issues of law, so this helps with the lack of legal expertise in terms of their training, though there are criticisms that there is an over reliance on the clerk.
- The training may not be adequate because there is often the criticism that magistrates are prosecution biased; this is something that should be made clear to magistrates when they are training.
- The Magistrates Association also reports a crisis in terms of the number of magistrates – there are currently 13,177 magistrates in England and Wales, which is down by more than half in the last decade. The coronavirus pandemic has halted some appointments, so the magistracy is facing a crisis in numbers.

- There are recommendations that the retirement age should increase to allow magistrates to sit beyond the age of 70.
- The selection criteria of magistrates mean that magistrates should represent the local area as they generally live close to the court in which they sit, though the formal mileage requirement has been abolished.
- Using magistrates is cheaper – in the Magistrates' Court, for example it is cheaper to use laypeople than to pay a qualified judge.
- Using laypeople provides a transparent system of justice – justice is being seen to be done.
- Committing to 26 half days a year can be difficult for people in certain jobs.

Credit will be given for any logical analysis and evaluation that links back to the advantages and disadvantages of lay magistrates, including proposed reforms.

Band	Marks	AO3: Analyse and evaluate legal rules, principles and concepts.
4	15-18	• Excellent analysis of legal rules, principles and concepts relevant to the advantages and disadvantages of magistrates. Analysis is detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding. • Excellent evaluation of the advantages and disadvantages of magistrates, including a valid and substantiated judgement. • Excellent citation of supporting case law and legal authorities.
3	10-14	• Good analysis of legal rules, principles and concepts relevant to the advantages and disadvantages of magistrates. Analysis is generally detailed with appropriate range of supporting evidence. • Good evaluation of the advantages and disadvantages of magistrates, including a valid judgement. • Good citation of supporting case law and legal authorities.
2	5-9	• Adequate analysis of legal rules, principles and concepts relevant to the advantages and disadvantages of magistrates. Analysis includes some detail with some supporting evidence. • Adequate evaluation of the advantages and disadvantages of magistrates, including reference to a judgement. • Adequate citation of supporting case law and legal authorities.
1	1-4	• Basic analysis of legal rules, principles and concepts relevant to the advantages and disadvantages of magistrates. Analysis includes minimal detail. • Basic evaluation of the advantages and disadvantages of magistrates. • Basic citation of supporting case law and legal authorities.
	0	Response not creditworthy or not attempted.