Suggested answers to the self-test questions

**Question 1**: What basis of costs is the usual basis upon which costs are awarded?

The standard basis.

**Question 2**: Is proportionality taken into account when assessing costs on the indemnity basis?

No. See paragraphs 4.3.2.1 and 4.3.2.2.

**Question 3**: What are the general principles in costs in litigation and how have these been amended?

The longstanding principles of the award of costs always being discretionary and the starting point being the loser generally pays the winner’s reasonable cost still stand but have been eroded somewhat in relation to personal injury cases. In April 2013, in personal injury cases, including clinical negligence, a claimant will in general no longer have to pay the defendant’s costs if the claim fails but the defendant will continue to have to pay the claimant’s costs if the claim succeeds. There of course exceptions to this new principle:

- The claim is found to be fraudulent
- The claimant fails to beat a Part 36 offer. The principles set out in Part 36 therefore override QOCS but only up to the level of damages recovered by the claimant.
The claim has been struck out where it discloses no reasonable cause of action or where it is otherwise an abuse of the court’s process.

In all these cases, it is very likely that the claimant will be required to pay the defendant’s costs subject to the two general principles above. However the new rules have also made it clear that both discontinued claims and appeal cases do benefit from QOCS.

**Question 4**: What is the likely consequence if a party exceeds his agreed or approved costs budget?

The onus is on the party to notify the opponent and the court. A failure to do so is likely to limit the recovery of costs to the agreed/approved budget unless there is good reason to depart from the approved budget. If there is not, there will be a loss to the party who exceeded the budget and failed to update their opponent and the court.