

THE LAW SOCIETY OF SCOTLAND
APTITUDE TEST FOR EU QUALIFIED LAWYERS

PAPER IV
PROFESSIONAL CONDUCT AND THE ACCOUNTS
RULES

4TH MARCH 2008

1330 – 1530
plus
extra 15 minutes (reading time)

The paper is divided into two sections. Section A relates to Professional Conduct and Section B to Financial Services and the Accounts Rules. You are required to answer **TWO questions from Section A and ONE from Section B.**

ALL QUESTIONS CARRY EQUAL MARKS

(Where a question is in more than one section you are expected to answer **ALL** sections of the question. You are expected to cite authority for your answers.)

Answers to each SECTION should be written in a separate answer book

SECTION A : PROFESSIONAL CONDUCT

Candidates should answer ONLY TWO questions from this section

(Where a question is in more than one part you are expected to answer all parts of the question. You are expected to cite authority for your answers.)

1. Neville is a middle aged sole practitioner in a city centre law firm. A mature intransigent to Law School and a late comer to practice, he has never felt very confident in his abilities. He finds that the stress of modern day practice is too much for him and clinical depression sets in. He then develops an addiction for sleeping pills. His short term memory is affected and he fails to apply for a practising certificate until several weeks after his last one has expired. Neville has a weakness for fast cars and has twice recently been convicted of being drunk in charge of a motor vehicle.

Before he became a solicitor, Neville had made a living from running massage parlours in Edinburgh. He has kept on his financial interests in the area and recently a major Scottish newspaper has published a series of exclusive reports, in which his name but not his occupation is mentioned and in which it is alleged that his parlours are thinly disguised fronts for brothels.

Neville's longsuffering trainee, Helen, is frequently left to get on with things without let or hindrance from Neville. She discovers a medical negligence file which Neville opened two years ago with little prospect of success. The file reveals that Neville has even told his clients that the case has been progressing normally and is now in court when in fact he has not even raised an action on his clients' behalf. Neville thinks that he is fairly fireproof from a serious negligence suit from the clients, however, since he included in his letter of engagement that his liability for negligence was limited to £10,000 and the clients did not reject this condition.

Neville's case is referred to the Law Society and thence to the Discipline Tribunal. Neville is reasonably sanguine since he is planning to bring evidence before the Tribunal from an old friend and past President of the Law Society as to whether his behaviour constitutes professional misconduct. Moreover, Neville feels that the Tribunal will be lenient since he is a first time offender and that to suspend him from practice in these competitive times might make it impossible for him to re-establish his practice.

Advise Neville and Helen as to their ethical and legal position

2. Doreen is a middle aged solicitor in a town in the Central Belt. She receives a call from a social worker asking her to represent Agnes a girl of 15, in connection with her parents' acrimonious divorce in which the mother is opposing all contact

between her children and their father and he is seeking regular contact including overnight visits. (You may assume that Agnes has the capacity to instruct Doreen.) An appointment is set up and Doreen meets Agnes in her office. She wants to see Doreen alone so her social worker waits in reception. Agnes is very concerned that everything she tells Doreen is completely confidential and that she will never tell anyone else. If Doreen is to adhere to the rules governing solicitors in Scotland, what answer should she give?

Agnes then goes on to say that she wants to go on seeing her Dad but just on day visits together with her brother John, aged 13, and her sister Morag, aged 7. On further probing, Doreen begins to suspect very strongly that Agnes is being sexually abused by her father. She finally admits this but only by swearing Doreen to secrecy. Doreen explains that unless she can use this information, Agnes's father may get to have her to stay overnight but Agnes is adamant that she doesn't want her father to get into trouble or to be prevented from seeing her and her siblings completely. Doreen decides to take on Agnes's case. Shortly afterwards the social worker telephones her and expresses concerns about Agnes' father abusing Agnes, although the social worker has absolutely no hard evidence of this, merely a sense that something isn't quite right. The social worker's job involves child protection and she asks whether Agnes has said anything to Doreen on the matter. Indeed, she insists that Doreen should reveal any evidence that she has which might be relevant to the child abuse allegation, "because it would be in the best interests of the child". Bearing in mind the rules of professional responsibility, what options are available to Doreen?

Two months later Doreen reads in the local paper that Agnes' uncle has been accused of child abuse and with a sinking feeling confirms in a conversation with Agnes that the accusation relates to herself but that there is no truth to it. Agnes refuses to tell the police that her real abuser is actually her father, and gives Doreen a diary for safekeeping which records episodes of abuse, including dates and places. Although the abuser's identity is not revealed in the diary there is evidence there that could be of assistance for the purpose of establishing an alibi for the uncle.

Doreen is contacted by (a) the uncle's solicitor and (b) the police asking for any evidence, papers or information that she may have that is germane to the case. What should Doreen do now?

3. a) Fat Bob is a sheriff court practitioner of some notoriety. He is representing Soapy Souter in a personal injury action against his employers for injuries sustained when he fell off a pylon five years ago. The action has been raised timeously. Soapy is adamant that the safety harness available to him was inadequate. Bob, however, discovers just before the proof, from documents and photographs made available by the other side, that Soapy's precognition contains a glaring error as to the safety procedures in place at the time. Soapy insists on giving his evidence as he recalls it.

Rather to Bob's surprise, the other side who have access to the same records do not detect the error and fail to cross-examine his client accordingly. The judge, not unnaturally, accepts Soapy's account on the point since it is uncontradicted by the other side. Had the error been detected it would have provided an almost cast iron defence to the employers. Bob is aware of this. Is Bob entitled to keep quiet about the error? Would it make any difference if counsel were involved in the case?

- b) Fat Bob is acting for Big Eck who was caught 15 feet up a drainpipe at 3 a.m. by the police. He is charged with attempted housebreaking. (Eck has form for housebreaking). His story is that he was tossing a pound coin in the air and it got stuck on a window ledge. Bob is suspicious but willing to put the Crown to the test. On the eve of the trial, Eck is particularly conscious of the somewhat threadbare nature of his story and indicates that actually he was descending from a friend's home where he had been dallying with the friend's wife while the friend was out of town. On hearing a key in the lock he had jumped out of the bedroom window. Eck is not prepared to call the friend's wife as a witness. Advise Bob as to his ethical position.
- c) Bob decides to continue with the case but indicates that Eck must tell the truth if he goes into the witness box. Eck suggests that he and Bob should go to court accompanied by Eck's identical twin. This would provide a crosscheck on the identification evidence of the police. Bob agrees. Although understandably confused, the police officer is adamant that the man in the dock is the accused. At the lunch recess Eck is very upset that his ploy has failed and hints for the first time that he may be guilty. Can Bob continue to defend him and if so may he put Eck into the witness box? On this occasion Eck has been charged as Sandy (a name he is called just as often as Eck although by chance all his previous convictions are as Eck rather than Sandy) and he has given his mother's address since he is moving flat at the time. As a result, there are no previous convictions libelled against him. What should Bob do about this? May he describe Sandy as a first offender if he is convicted?

SECTION B : FINANCIAL SERVICES AND THE ACCOUNTS RULES

Candidates should answer ONLY ONE question from this section but both parts of the question should be answered.

1.a

- (i) Provide four examples of behaviour that may lead you to money laundering suspicions about a client.
- (ii) Explain what is meant by a PEP.
- (ii) Name three pieces of documentation that can be used to verify a client's identity.
- (iv) Describe the main functions of an MLRO/Nominated Officer.
- (v) List three of the criminal offences established under POCA 2002.
- (vi) When would the "one off transaction" exemption from verifying a client apply?

AND

1.b You are appointed as an Attorney under a Continuing Power of Attorney for an elderly client with early stage dementia. In the circumstances you are required administer her financial affairs. What sort of activities are you likely to be involved in and what are the requirements of the Accounts Rules in relation to Powers of Attorney and actions under them?

2.a You are moving office, and during the course of your move, a cashroom assistant has found a number of cheques from clients in the back of a filing cabinet. You are the Designated Cashroom Partner (DCP) and, after investigation, you have clarified that:

- (i) A letter, now 12 days old from the stated date of origin, encloses a cheque for £2,500. The cheque was intended for paying outlays incurred by your firm as they arise.
- (ii) A cheque dated 7 days ago is attached to a copy of a fee note from your firm; it is intended that the cheque be used to settle that fee, which was issued last calendar month.
- (iii) A cheque for £8,250 has been held for four days. It was intended for the deposit for a house purchase which is due to take place at the end of next week.

- (iv) A cheque, with a covering letter which specifically asks that it remains unbanked until the beginning of next month, is uncovered. The purpose of the cheque is to pay school fees for the client's children (a function carried out by your Trust & Tax Department).

In your role as DCP outline the implications of each of these from the point of view of the Accounts Rules.

AND

- 2.b You are a solicitor in Oban who receives a verbal introduction to a new client Mr Brown from a firm of Chartered Surveyors in Dumfries regarding a farm which Mr Brown wants to buy. Mr Brown is from Ulster and the Chartered Surveyor explains that he understands Mr Brown to be a property developer.

Mr Brown contacts you and explains that he needs to buy the Farm in Aberdeenshire for £1.5m quickly for CGT roll-over reasons. He does not require a loan.

Client identification papers come through certified by Mr Brown's local clergyman enclosed in a covering letter from the firm of Chartered Surveyors. As the missive process begins you learn from the Chartered Surveyors that Mr Brown has never visited the property and has only ever instructed a short valuation survey. Mr Brown subsequently e-mails you to let you know that the purchase will be partially funded with an unsecured loan from his cousin, a prominent politician in the Republic of Ireland.

- (i) What due diligence checks would need to be carried out?
- (ii) Would there be any grounds for suspicion in this case and if so what are they?
- (iii) What action should you now take if you were:-
 - (a) acting in your capacity as an employee of your firm
 - (b) acting in the capacity of MLRO/Nominated Officer for the firm?