

THE LAW SOCIETY OF SCOTLAND  
QUALIFIED LAWYERS ASSESSMENT

**PROFESSIONAL CONDUCT**

11 May 2023

1300 – 1430  
(90 minutes)

Two questions only to be attempted. 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.

## Question 1

Brian, an established client, emails you at the end of a trying week. He tells you that his cousin Harry, of whom he is very fond, appeared unexpectedly on Brian's doorstep recently with a nearly new iPad on which Brian can play all his favourite tv programmes on catch up, as well as video games. Brian was very grateful but a little taken aback because he knew that Harry had been hit badly by the cost of living crisis and was running up serious debts. Brian is consulting you because Harry has just called him to enquire whether he still has the iPad, adding that the police have been making enquiries about him and the iPad. Harry finally admits that he obtained the iPad in suspicious circumstances from a friend of his with a reputation in handling stolen goods.

What do you advise Brian as to the options available to him? Can you continue to act if he refuses to accept your advice?

Next morning when you go into the office, sitting on the receptionist's desk is a box and in it the iPad which was left by Brian a few minutes earlier.

What do you do then? If the police were to contact you about the iPad what, if anything, could you tell them?

## Question 2

Fiona is the sole beneficiary and co-executor in her mother's estate. Her mother died last year and the house, which was the bulk of her late mother's estate, has still not been sold despite being in a good catchment area for local schools. Fiona appreciates that the price of houses is stalling especially in the case of old houses with poor insulation and antiquated boilers and kitchens and with a challenging home report. She is not prepared to invest in an Air Source Heat Pump, feeling that the government grants are too inadequate to justify the expenditure. Nevertheless, she is constantly phoning Jason, the solicitor who is acting as co-executor and administrator of her mother's estate since she is very anxious to realise the capital from the sale of the house. One day Jason emails her to advise that he has located an interested purchaser ( who is not in a chain ) who is prepared to pay £450,000 for the house. The house was valued at £550,000 and Fiona is very disappointed at the offer, considering how long the property has been on the market. She suggests to Jason that he offers the house at a fixed price of £500,000 but he advises against this on the grounds that the prospective purchaser is interested in another property, and unless Jason can give him an answer that day as to whether the offer is acceptable, then they are likely to lose him as a prospective purchaser. Indeed, given the continuing high energy prices and the way the market is going, Jason fears that they may not get another purchaser willing even to pay £450,000.

Reluctantly Fiona concedes that Jason must do what he thinks is best in the circumstances, and the offer is accepted. That evening at the bowling club Fiona overhears a conversation in the bar. A man is telling his colleagues how his solicitor managed to get him a really good deal on a big old house. Fiona listens carefully and discerns that the solicitor in question is in Jason's own firm ( but acting for another partner in the firm ), that the house in question was her mother's and it is clear from the familiar terms of reference to the solicitor that the man in the bowling club is on close personal terms with the solicitor. Fiona goes home depressed and aggrieved.

What advice would you give Fiona if she came to you to complain about the actions of Jason? What arguments could Jason use to defend himself if Fiona complains to the SLCC? Would it make any difference if it transpired that the solicitor acting for the buyer was actually responsible to Jason, rather than another partner in the firm, and that Jason had therefore been acting for both clients?

### Question 3

- a) Nigel is a go-getting associate specialising in employment law in a large central belt law firm who is hoping that his talents will prove attractive to any London based law firm seeking to expand into Scotland. He signs a restrictive covenant undertaking not to practice employment law or charity law in Scotland or England for a period of two years from the termination of his new employment, or to work for clients of his current firm in any capacity during that same two year period. Nigel thinks that assiduous use of social media and LinkedIn will help him avoid these conditions and the Law Society's rules on self-publicity. Nigel frequently blogs on topical matters of employment law and has already attracted a considerable following from his firm's corporate clients. His profile has been further raised by his regular tweets after decisions in employment tribunals in which his clients have been involved.
- b) At the end of the year Nigel receives an offer to work (at a considerably increased salary) for a large firm in Aberdeen who are seeking to create a team of specialists in employment law. Nigel accepts the offer and agrees to write to his corporate clients telling them of his move and offering to continue to act for them should they so wish. As evidence of new firm's entrepreneurialism, they tell Nigel that he can offer to work for clients in return for equity fees, or fees calculated as a percentage of any damages awarded in any money based claims and that he may offer gift vouchers and bottles of wine to any clients that refer new clients to the firm.
- c) Sophie is a fellow associate of Nigel's. She works in the field of commercial tenancies. Seeking to evict a sole trader who is in his 80s with failing eyesight she hits on the idea of sending him two notices to quit ( one by expedited delivery and one by ordinary mail ) explaining to the tenant that she has sent two notices to ensure that one arrives safely. However, Sophie deliberately changes the terms of the second notice to make it more effective than the first notice, calculating that the tenant will think the second notice is the same as the first and not read it thoroughly, and therefore fail to take the required steps to defeat the second notice to quit. Sophie learned about the "two notices" stratagem in a recent webinar where she was informed the use of this device was standard practice in the industry. Sophie can see how some more squeamish observers might feel that what she has done is borderline behaviour, but she sees it as the kind of "heads up" lawyering that clients expect today and sincerely believes that what she has done was not dishonest, since it is common practice in the industry. To Sophie's dismay, although the stratagem worked and the tenant was evicted, he successfully appealed the eviction and has complained to the SLCC claiming that Sophie acted dishonestly. Sophie asks Nigel for his advice.

Advise Nigel and Sophie as to their position in terms of professional ethics.

**END OF QUESTION PAPER**