

THE LAW SOCIETY OF SCOTLAND  
QUALIFIED LAWYERS ASSESSMENT

**PROFESSIONAL CONDUCT**

8 November 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 is a solicitor working for a large firm. Alice, an old friend from school, bumps into Brian on a night out. Over the course of the evening, and several drinks, Alice tells Brian that her business has not been going well and she is in significant financial difficulty. Alice is extremely worried and fears that she will lose her business. One creditor has been harassing her for months and is threatening to sue her for the outstanding debts. Alice believes that the debt is not due but does not know the legal position. Alice explains that she keeps her business assets spread across separate bank accounts which she worries her creditors will find out about. She asks Brian for his advice.

Brian tells Alice that he specialises in insolvency and offers some of the potential defences Alice could use. He sends Alice a quick email from his work email with some recent cases which support Alice's position together with some suggested wording for a response to the creditor. Brian also suggests that Alice could reduce the risk of insolvency by getting a better deal on her business loan by offering a personal guarantee over her assets.

Alice is delighted with the advice and the next day writes to her creditors setting out some of the cases and arguments which Brian gave her. In addition, Alice grants the personal guarantees to her bank and secures a better deal on her business loan. Alice also gives Brian a very expensive watch explaining that it is a family heirloom and asks Brian to hold on to it in case it is sold by her creditors.

The next month Brian gets a call from Big Bank Ltd, a long-standing client of Brian's firm. They explain that they have been chasing one of their debtors and want to raise proceedings. Brian runs the business through the firm's conflict checker which shows no conflict. Brian agrees to raise proceedings but due to pressure of work does not get a chance to do so until several months later.

It transpires that the business that Brian's firm has sued belonged to Alice. Alice complains to the SLCC alleging that Brian is acting in a conflict of interest and that the information she gave Brian is being used against her. She also complains that the advice Brian gave her regarding the loan has resulted in the bank seizing her family home which did not realise was the consequence of the guarantee.

In addition the court action raised against Alice was done too late by Brian and is now timebarred (which would give Alice a complete defence to the claim). Luckily for Big Bank, Alice has not yet pled this defence. Big Bank are keen to proceed with the action on the assumption that Alice will not notice the timebar defence. If Big Bank drop the action now, they will lose any chance of recovering the money, however if they continue with the action, there is a good chance that Alice will not raise this defence and they will get what they want. Brian considers that it is in both his and Big Bank's interest to continue with the case and hope that the prescription defence is not raised. Brian agrees to continue with the action but, as the error was his, he agrees to reduce his fees by 50% as a gesture of good will.

Discuss the professional consequences for Brian and his options.

## Question 2

Catherine acts for a client, Amy, in a long running divorce action. Mary is the solicitor acting on behalf of Amy's ex-husband, Richard, in the action.

Part of the case involves care of the children, and an interim hearing has been assigned to determine the custody arrangements whilst the case proceeds through the courts. In a consultation Amy tells Catherine that Richard is a terrible parent. Amy says that Richard has been stealing money from her and her family and that she suspects Richard has been using recreational drugs whilst looking after the children. Amy also claims that she overheard Richard telling his solicitor Mary about his drug taking and that Mary had told him to deny this if he was asked about it in court. Amy asks Catherine to put this before the court to show that he is not a suitable parent and that Richard and Mary will say anything to get what Richard wants.

The case calls and the Sheriff asks Catherine for her client's position.

(1) What can Catherine tell the Sheriff in support of Amy's case.

After the hearing Mary says she wants to discuss potential settlement. Amy tells Catherine that she could settle the financial aspect of the divorce at £150,000 but would like Catherine to make a starting offer of £100,000. Catherine makes the offer to Mary who immediately calls Catherine to say that she can probably get her client to offer settle at £150,000 if Catherine can do that same. Catherine tells Mary that she can do a deal at £150,000, but that the conversation is "off the record". Catherine calls Amy who is furious that a deal has been done at £150,000. Amy tells Catherine that the figure of £150,000 was her absolute maximum but that she wanted to do a deal at a lower level. Catherine immediately calls Mary and tells her that her client is not prepared to settle at that level and in any event their conversation was off the record. Mary says that a deal was done, that Catherine did not say that it was "without prejudice" and that she will raise the terms of the conversation before the court if Catherine tries to back out of the deal.

(2) Advise Catherine of her professional responsibilities and conduct.

The case is proceeding to Proof and Amy's financial position has deteriorated. She tells Catherine that she is no longer able to pay Catherine's fees and will need to find a cheaper solicitor or conduct the case herself. There is a significant amount of fees outstanding on the account. Amy eventually decides to run the proof herself. She promises to clear the outstanding invoices as soon as possible but that she needs her complete file so that she can properly prepare for the Proof which is less than a month away.

(3) What are Catherine's professional duties and options?

Following Catherine's withdrawal from acting she receive a letter from Amy. The parties have reconciled and agreed a settlement between them directly. The parties need help in finalising the settlement agreement which will record the terms of their agreement. Although neither took legal advice in respect of the settlement agreement, Amy and Richard do not want to spend any more money on legal fees and just want the agreement to be recorded and lodged with the court. Given Catherine's previous knowledge of the case and the fact that Catherine was not involved in negotiating the settlement, both Amy and Richard think it would be simpler and cheaper for Catherine to prepare the relevant documents and lodge them with the court.

(4) What should Catherine do?

### Question 3

- a) Karen is an entrepreneur and personal injury solicitor who runs her own business. She offers a 'no win – no fee' arrangement whereby clients will not be liable for any legal fees but that if she is successful Karen will take a percentage of the settlement sum for her fees. The percentage charged will depend on the settlement which is secured for the client and the complexity of the case. All of this is set out in Karen's terms of business which every client receives.

To help generate business Karen sponsors several local events where she advertises her services. These include paid TV adverts, speaking at political events as well as speaking at public forums where she explains that she has secured over £1m in payments for her clients, far in excess of her competitors. Karen also writes some newspapers articles where she claims that she provides the best service and that other (unnamed) local solicitors charge far more and achieve far less than she does.

- b) John acts as a criminal solicitor defending his client in an assault charge. In a consultation the client tells John that they assaulted the victim but that the procurator fiscal has no evidence of this other than the statement of the victim. Without the admission the procurator fiscal's case will likely fail. John's client asks him to plead not guilty and to take the case to trial to expose the weakness in the procurator fiscal's case.
- c) David is a solicitor with over 20 years in residential conveyancing. One of David's clients is looking to purchase a croft in Edingow in the north of Scotland. David had done a couple of crofting matters during his traineeship and has been to a couple of CPD events where current issues on crofting law were discussed. In addition, David is good friends with an advocate who deals regularly with agricultural matters and who David thinks can help him if anything arises.
- d) Adam is a partner in a law firm. One day he receives a letter from the Police advising that one of his former clients has been charged in a long running fraud. The police ask that Adam hand over his file of papers to assist in their investigations. Adam knows that there is material in the file which would implicate his client and is concerned that he may be facilitating the fraud if he fails to cooperate with the police.

Discuss the professional conduct matters arising from the above matters.

**END OF QUESTION PAPER**