

# Professional Conduct

Wednesday 6<sup>th</sup> November 2024

2.30pm to 4.00pm

**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

Fraser is a criminal lawyer working in a small town dealing primarily with High Court work. Whilst at home with his wife he receives a call from Shona, a close friend of him and his wife, who is very upset and crying. Shona says she has just hit someone with her car and does not know what to do. In a rambling call she tells Fraser that she had been drinking and drove away from the scene. Fraser tries to explain that Shona has to phone an ambulance however Shona is so intoxicated that she mishears Fraser and thinks he has told her to call the police. Shona tells Fraser that she will call the police and then hangs up. Fraser is extremely concerned and attempts to call Shona back, but she does not answer. Fraser's wife who was with him at the time is also concerned and asks Fraser if Shona is ok. Fraser explains what Shona told him but that he has not been able to get back in touch with her. Fraser makes a quick note of the call in his diary and decides to drive to Shona's house the next day to check that she is ok.

The next day Fraser drives to Shona's house where he finds the police already in attendance and are about to arrest Shona. Fraser explains that Shona called him last night and he is worried about her. The police ask Fraser about the terms of his call with Shona and if he has any notes of the discussion.

- a) What can Fraser tell the police about the telephone call and does he require to hand over his diary note?

After a few months later Fraser and his wife are cited as a witness by the Procurator Fiscal in a case against Shona.

- b) What can Fraser tell the court about the terms of the telephone call and diary note in court?

Shona spots that Fraser's wife is cited as a witness in the case and lodges a complaint with the Scottish Legal Complaints Commission ('the SLCC') claiming that Fraser has breached confidentially by telling his wife about the call. In addition Shona alleges that Fraser gave her bad advice about calling the police and that it was that call that led to her being charged.

- c) What can Fraser tell the SLCC in his defence and about the terms of the call with Shona including her state when she called?

## Question 2

Colin is a litigation lawyer working in a big city law firm. In his spare time he also chairs the local branch of a political party and is active on social media. He has recently won a big case for one of his clients, Samantha, and submitted his fee to her.

The invoice is more than twice the amount which Samatha was told when she first instructed Colin. She also spots that there is a success fee included which amounts to 25% of the amount she won in the litigation. She calls Colin to complain about the fee. Colin points to his terms of engagement which say that any estimates cannot be relied upon. The terms of engagement also say that clients cannot complain about fees unless the complaint is in writing and is received within 7 days the invoice. Colin explains his decision is final and if Samantha is not happy with it then she would need to defend the matter in court.

Samantha is furious and contacts citizens advice bureau who tell her to write to the SLCC. The SLCC investigate the matter and decide to accept the complaint for investigation.

Colin is outraged by the SLCC's decision and starts a campaign to change the laws regarding the role of the SLCC. Colin starts posting various articles on social media which critique the activities of the SLCC suggesting that the system requires reform. Colin uses his position as chair of the local political party to write to the local government minister to put pressure on the SLCC to ask them to revisit their decision in Colin's case.

In preparation for the SLCC investigation, Colin spots an error he made in Samantha's settlement agreement in the case he won for her. The error could mean that she will lose a large amount of her settlement sum. The error can be fixed however Colin would need to ask the court to amend the settlement agreement. There is no guarantee that this would be successful. Colin contacts Samanta and tells her that there may be an issue with the settlement agreement but that he can fix this. He tells Samantha that if she agrees to drop the complaint against Colin he will raise the court action free of charge.

Discuss the professional conduct and ethical issues arising from the above.

### Question 3

Freya is a conveyancing solicitor working out of a small island practice. Helen is one of Freya's long standing and high value clients and has instructed Freya in both her personal and business work. Helen comes to Freya looking for assistance in several transactions. These include the following:

- a) A purchase of a property owned by Helen's holding company, Small Island Holdings Ltd. Helen is the sole director of the Company and only shareholder. The purchaser is another company in which Helen is a director but not a shareholder. As a pre-existing client Helen proposes to pay for the purchase price and fees personally. Helen will also provide instructions for both buyer and seller.
- b) Helen is in the process of separating from her husband (Kevin) who is also a long-standing client of Freya's. As part of the divorce settlement, in which Freya's firm acted on behalf of Helen, the matrimonial home is to be transferred to Kevin. Both parties want to keep fees down and agree that Freya should complete the transaction. Freya knows the terms of the divorce settlement (given that her firm were involved in preparing it) and so is confident that she can complete this transaction without any difficulty.
- c) Helen needs to transfer a flat from her personal name into a trust for the benefit of her children. To complete this, Helen needs to set up a trust and proposes that Freya be the trustee. Helen explains that she is happy to act as trustee but feels she cannot complete the transaction. Freya suggests that her husband, who is also a solicitor at Freya's firm, complete the paperwork and act in the transaction.
- d) Helen is concerned about her future potential care costs. Helen has heard that, in the event she requires care, the local Council may force her to sell her house to pay for it. To avoid this, she proposes to transfer her main house to Freya so that it is not in Helen's name but under the condition that Freya transfer this to Helen's children in the event of her death. Helen asks Freya to make the necessary arrangements.

Discuss the professional conduct and ethical issues arising from these transactions.

**END OF PAPER**