

SQE2 sample question and discussion of answer

Client interviewing and attendance note/legal analysis (Wills and Intestacy, Probate Administration and Practice)

November 2020

Candidates will undertake 16 assessments in SQE2. To pass SQE2 candidates will need to obtain the overall pass mark for SQE2.

This sample question and discussion of answer is an example of a client interview and attendance note/legal analysis assessment.

Candidates have 10 minutes to consider the email and any documents. They then have 25 minutes to conduct the interview with the client. Candidates have 25 minutes to write, by hand, an attendance note/legal analysis of the interview they have just completed.

For further detail see the SQE2 Assessment Specification.

Please note that the sample questions are provided to give an indication of the type of tasks that candidates could be set. They do not represent all the material that will be covered in SQE2. Future questions may not take exactly the same format.

Question and additional candidate papers

Email to Candidate

From: Partner
Sent: 5 May 202#
To: Candidate
Subject: Damian Robins

Damian Robins is a new client. He has made an appointment to see you today following the death of his sister, Astrid Green. He has sent me a copy of his sister's will which you will find attached.

You will see from the will that Damian is one of the executors. He intends to administer the estate without our help but he is instructing us to give him some initial advice about the following:

- who should act as executors;
- how the estate should be distributed. I understand some of the assets mentioned in the will were no longer owned by the deceased when she died; and
- whether any inheritance tax will be payable and, if so, how much.

Astrid's family situation is a little complicated, so Damian has kindly provided us with a brief summary of Astrid's family, which I have also attached to this email. This should be useful when considering the terms of Astrid's will.

I will be referring to your attendance note/legal analysis to write a letter of advice to Damian, so please be sure that it covers the advice we should give him about these issues even if you have covered this in the interview. Your attendance note should also cover all the usual matters: the facts, initial legal analysis, advice to the client, next steps, and of course any professional conduct issues that arise. Obviously if Damian raises any other issues with you, make sure the attendance note also covers them and your advice about them, even if you have already covered this in the interview.

Thanks

Partner

Attachments:
Will of Astrid Green
Details of the family of Astrid Green

Note to Candidates:

For the purpose of this assessment, you should not deal with nor will you be asked about client care issues including costs or with money laundering issues.

This is the last Will of me ASTRID GREEN of 99 Castle Street Grays Essex RM16 7YY which I make this 12th day of June 2004

1. I REVOKE all former Wills and Codicils made by me
2. I APPOINT my husband COLIN GREEN and my brother DAMIAN ROBINS and my sister JOAN KNIGHT to be my executors and trustees ("my Trustees")
3. I MAKE the following gifts in each case free of tax:
 - (a) To my son FRANK GREEN my grandfather's carriage clock which was given to my grandfather on his retirement from ABC plc
 - (b) To each of my granddaughters GAYNOR GREEN and SUSAN GREEN the sum of £500
 - (c) To my nephew JOHN ROBINS 500 shares in ABC plc
4. I GIVE the remainder of my estate (after payment of my debts funeral and testamentary expenses and the aforementioned gifts) to my Trustees to hold upon trust for such of the children of my sister JOAN KNIGHT as shall survive me and attain the age of 21 years and if more than one in equal shares absolutely

SIGNED by the said ASTRID GREEN
in our joint presence and then by us in hers

Astrid Green

George Jones

George Jones
18 Cooper Street
Hackney
London
E9 7TR

Hairdresser

Sheila Jones

Sheila Jones
18 Cooper Street
Hackney
London
E9 7TR

Cleaner

Note to Candidates:

This is a photocopy of the original will. You may assume that the original will has been correctly executed in accordance with the provisions of the Wills Act 1837 and that the testator had full testamentary capacity.

Brief details of the family of Astrid Green, deceased

Astrid Green:

The deceased – died 1 April 202#; married Colin Green – divorced 2011

Astrid's son (her only child):

Frank Green (aged 40); married to Helen; two children - Gaynor Green (aged 19) and Susan Green (aged 16)

Siblings:

Brother: Damian Robins (aged 60); married to Elena Robins; one child - John Robins (aged 38)

Sister: Joan Knight(aged 70); Astrid's twin sister; widowed; two children - Fiona and Jack (twins - aged 36). Jack died last week, leaving a widow, Maureen, but no children.

Other relatives:

None: Astrid's parents died many years ago.

Client information (provided to the client not the candidate)

Client Information (Damian Robins)

Your name: Damian Robins
Your address: 46 Cunningham Crescent, London, SE23 0AD
Tel: 07715 766654
Date of birth: 16 February 1960
Age: 60
Email: d.robins@gmail.com

About you

You are married to Elena and you have one child, John. You and Elena are retired civil servants. You are one of three children (see below).

You are an intelligent, confident and articulate man. You are efficient and good with paperwork and technology. Now that you have retired, you have quite a lot of spare time. You are one of the executors appointed in your sister's will and you are sure that after some initial guidance from the solicitor you would be quite capable of dealing with her estate without any further professional assistance. You were not impressed with the solicitors who dealt with your late father's estate, as they were slow and expensive. Your experience with them has somewhat coloured your view of the legal profession.

You were close to your sister and to the other members of your family who have recently died, but tend not to let your emotions show and you will be able to discuss your late family without becoming visibly upset.

Astrid Green

Your sister, Astrid Green, died over a month ago of an inoperable brain tumour. You knew that she was unwell and so it was not a surprise but you are sad nevertheless. Knowing does not always make it easier. She was a great big sister and friend to you. You feel like you have lost your "protector and best friend" and you are keen to administer her estate correctly and see that her wishes are carried out.

Astrid's personal details are as follows:

Full name	Astrid Green
Last address	99 Castle Street, Grays, Essex, RM16 7YY
Date of birth	19 January 1950
Date of death	1 April 202#
Marital status	Divorced
Occupation	Retired school teacher

Astrid's will and family situation is a little complicated and that is why you have come to see a solicitor. You have already provided the solicitor with a copy of the will that Astrid made in 2004 and also a brief summary of her and your family.

Further details related to Astrid's will

The other executors:

In addition to you, there are two other people mentioned as executors in the will.

Colin Green - Colin is Astrid's former husband. Colin and Astrid divorced in 2011. Colin has not re-married. He has a good pension and is quite wealthy, having inherited a large sum of money from his aunt two years ago. You have not discussed the will with him, but think that his son, Frank, is likely to have informed him of its contents because you gave a copy of the will to Frank.

You are sure that the divorce was finalised and that there was a clean break settlement ie no further payments are due.

Joan Knight - Joan is Astrid's widowed twin sister and, of course, your sister too. She had cancer a couple of years ago. She has responded well to her treatment and the prognosis is good. However, she is still quite weak and would prefer not to act as executor. In addition, she is still very upset about the death of her son Jack (see below) and has enough to worry about without the added burden of acting as her sister's executor. Joan has not done anything in relation to the administration of Astrid's estate.

The other people mentioned in Astrid's will:

Frank Green

Frank Green (aged 40) is Astrid's son. Frank is married to Helen and they have two daughters: Gaynor Green and Susan Green – see below.

Gaynor Green and Susan Green (Astrid's granddaughters)

Gaynor (aged 19) and Susan (aged 16) are the only children of Frank Green (see above).

John Robins

John Robins (aged 38) is your only child and Astrid's nephew. John is single and has no children.

Joan Knight's children

Joan had twins. (They run in the family.) Fiona is 36, single and has no children. Her twin brother, Jack, died of a heart attack on Monday last week, only a few weeks after Astrid died, which has been a double blow to the family. Jack was married to Maureen and had no children. You do not know if Jack made a will.

Items mentioned in Astrid's will:

The carriage clock

Astrid's house was burgled a few years ago. One of the items taken by the burglars was the carriage clock that she inherited from her grandfather. Although this was of great sentimental value to her and the family, it was only worth about £50.

Shares in ABC plc

You and Astrid each inherited 500 shares in ABC plc on the death of your grandfather. Astrid sold her shares two years ago. You do not know how much she received for them but you still have your shares which are currently worth about £1,000.

Astrid's property and finances

Assets:

House - Astrid owned and lived at 99 Castle Street, which is a small 2 bedroomed terraced house. It is free of mortgage and is worth approximately £250,000. She did not own any other house.

Car - she did not own a car.

Other personal belongings – Astrid did not own anything of any particular value. You estimate that all her personal belongings are worth approximately £2,000.

Bank accounts and investments – Astrid had a current account with NatWest. You think that there is a current balance of about £3,000. She also had savings accounts with HSBC and Santander. Again, you are not sure of the balances, but think there is about £10,000 in HSBC and maybe £5,000 or so with Santander. You can find out the balances, if required.

Insurance policies – Astrid had a life policy with LifeCo Ltd and you have the policy document at home. You sent a death certificate to LifeCo Ltd and you have received a letter in reply confirming that the sum of £10,000 is due to the estate under the policy and that it will be paid to the personal representatives. You can send a copy of the letter to the solicitor, if required.

Pension - Astrid was in receipt of state and occupational pensions totalling about £2,500 per month. You do not know if there has been any overpayment (or underpayment) of these pensions nor whether a lump sum payment is due as a result of Astrid's death under the occupational pension. If necessary, you can make enquiries of the occupational pension provider.

Debts:

Astrid used a Marks and Spencer credit card for convenience but always paid the full balance due each month. You are not aware of any other debts and are confident that there are unlikely to be any except for the final credit card bill. You are not sure how much this will be – maybe a couple of hundred pounds.

Funeral expenses – these plus the funeral reception cost £5,100 which you paid out of your own funds. You have the receipts at home. You also registered the death and paid for three death certificates out of your own funds. You do not recall the exact cost of the death certificates but you have the receipt at home.

Gifts:

Astrid did not make any lifetime gifts.

Other

Astrid did not have any interests under a trust.

Family and dependants

There are no other members of the family and Astrid did not have any dependants. You do not think anyone is likely to object to the terms of the will.

Further information

- You believe this to be the only will Astrid ever made.
- You found the original will in Astrid's house (in a file of personal papers that Astrid had prepared in anticipation of the sad day when she would die) and you now have it securely locked in a cupboard in your house.
- Your sister was perfectly competent mentally when she made the will – and indeed right up to her death.
- Your views on the will if asked:
 - You were not particularly surprised to see that Astrid had made little provision for her son, Frank, in her will. Astrid had known it was likely that Colin would inherit a significant amount from his aunt and that it was probable that he would pass this to their son, Frank. You gave Frank a copy of Astrid's will and he has told you that he does not object to its terms. Colin has ample assets of his own to live on.
 - Astrid had always been very close to her twin sister, Joan. Joan's late husband had squandered money which had upset Astrid a great deal. You think that by making provision for Joan's children in her will, Astrid was trying to compensate them for their father's unwise spending. You have no problem with this and are content with the terms of the will.

Summary of the advice you are seeking

1. Executors

You would like to know who should act as executors. Joan would prefer not to act and Colin is divorced from Astrid. You would like to know if you could act on your own.

2. Distribution of the estate

You wish the solicitor to advise you as to how the estate will be distributed bearing in mind Jack's death and the fact that some of the assets mentioned in the will were no longer in Astrid's possession at her death.

3. Inheritance tax

You are concerned to know exactly how much IHT will be payable.

You would like to be sent a letter in which the solicitor sets out the situation with regard to the executors, how the estate will be distributed and whether any inheritance tax is payable and, if so, how much.

Discussion of answer

Interviewing and attendance note/legal analysis: Points to note

The assessment criteria for **interviewing** are as follows:

Skills

1. Listen to the client and use questioning effectively to enable the client to tell the solicitor what is important to them.
2. Communicate and explain in a way that is suitable for the client to understand.
3. Conduct themselves in a professional manner and treat the client with courtesy, respect and politeness including respecting diversity where relevant.
4. Demonstrate client-focus in their approach to the client and the issues (ie demonstrate an understanding of the problem from the client's point of view and what the client wants to achieve, not just from a legal perspective).
5. Establish and maintain an effective relationship with the client so as to build trust and confidence.

The assessment criteria for the **attendance note/legal analysis** are as follows:

Skills

1. Record all relevant information.
2. Identify appropriate next steps.
3. Provide client-focused advice (ie advice which demonstrates an understanding of the problem from the client's point of view and what the client wants to achieve, not just from a legal perspective).

Application of law

4. Apply the law correctly to the client's situation.
5. Apply the law comprehensively to the client's situation, identifying any ethical and professional conduct issues and exercising judgement to resolve them honestly and with integrity.

Interviewing will be marked by the assessor playing the role of the client and will be marked on skills only. The attendance note will be marked by a solicitor who will assess candidates on both skills and application of law. Marking is based on global professional judgements rather than a tick box or checklist approach.

The starting point for these global professional judgements is the standard of competency of the assessment, namely that of the just competent Day One Solicitor ([The Threshold Standard](#)). Markers are flexible as to the approach taken by the candidate.

Marking is based on performance on each of the assessment criteria judged on a scale from A – F as follows:

A: Superior performance: well above the competency requirements of the assessment

B: Clearly satisfactory: clearly meets the competency requirements of the assessment

C: Marginal pass: on balance, just meets the competency requirements of the assessment

D: Marginal fail: on balance, just fails to meet the competency requirements of the assessment

E: Clearly unsatisfactory: clearly does not meet the competency requirements of the assessment

F: Poor performance: well below the competency requirements of the assessment

For further details of the marking see the [Assessment Specification](#) and the Marking and Moderation Policy (to be published). The Assessment Specification provides further information about what is meant by correct and comprehensive application of law.

Key legal points include the following:

Exact citations eg of rule or section numbers are not required.

Executors

The effect of divorce on the provision in the will appointing the former spouse as an executor.

Options available to an executor who does not wish to act.

Whether an executor can act alone, despite the gift in the will to a minor.

Distribution of the estate

Ademption of a specific gift: the carriage clock.

The effect of a general legacy: the testator had sold the shares she owned in ABC plc prior to death. On the face of the will the gift of shares appears to be a general legacy.

The effect of a minor beneficiary not being able to give a valid receipt.

The effect of a residuary beneficiary dying after the testator and having satisfied the age contingency in the will.

Inheritance Tax

Identifying the taxable estate.

Whether a lump sum payment is due from the occupational pension provider and, if so, its tax status, will need to be ascertained.

The value of the taxable estate and the available nil rate band: the value of the taxable estate appears to fall within the nil rate band of £325,000 (subject to confirmation of the exact date of death value of the net taxable estate).

Rate of tax applicable when the estate is within the nil rate band.

Note on sample answers:

Two sample answers are provided (Sample A and Sample B). Neither answer is perfect nor a model answer and there are further points which could be made in both. You should not assume that everything in the samples is correct. A is a stronger answer than B but both at least reach the Threshold Standard.

Attendance Note

Please note that, rather than copying from the notes taken in the interview, candidates can refer to these notes in the attendance note. The sample answers have been presented as one document, not referring to the interview notes, for ease of reading.

Facts

Attending Damian Robins regarding the estate of his sister, Astrid Green, who died on 1 April 202#.

Name: Damian Robins

Address: 46 Cunningham Crescent, London, SE23 0AD; Tel: 07715 766654

Email: d.robins@gmail.com

Damian provided a copy of Astrid's will and brief details of her family but intends to administer the estate himself.

He gave me details of Astrid's assets and further details about her family (see below).

Astrid lived at the address in the will. Born 19 January 1950. Retired school teacher. Astrid did not remarry after she and Colin Green divorced in 2011.

Legal Issues/Advice to the client

1. Who should act as executors?

The will, dated 12 June 2004, appoints Damian as executor along with his sister, Joan Knight, and Astrid's former husband, Colin Green. Colin and Astrid divorced in 2011 and his appointment will therefore not take effect. Joan is Astrid's twin sister. Joan's son died recently and Joan is recovering from cancer treatment so she would prefer not to act as executor. She has not assisted in the administration of the estate to date and can therefore renounce her executorship or have power reserved to her. Damian can act as the sole executor.

2. How will the estate be distributed?

Astrid's will appears to have been validly signed. Gifts are as follows:

- a) Astrid's son, Frank Green, survived Astrid but the carriage clock identified in clause 3(a) was stolen in a burglary prior to her death. The gift will therefore fail.
- b) Gaynor and Susan Green survived Astrid and will each receive £500. Gaynor is aged 19 and will be entitled to receive her gift. Susan is under 18 and cannot give a receipt for her legacy. Her parents could give a receipt instead.

- c) The gift of shares to John Robins is a general legacy. Astrid sold her shares in ABC plc before her death. The executors will therefore have to buy shares or pay John the sum which would purchase them.

The residue of the estate (the assets less debts, expenses and legacies) passes to Joan's twins, Fiona and Jack. They both survived Astrid and satisfied the age contingency in the will. However, Jack died on Monday last week. Jack's share of the residue will pass according to his will or intestacy.

3. Is any inheritance tax payable and, if so, how much?

Assets:

99 Castle Street – small 2 bedroomed property, mortgage free, £250,000. Astrid did not own any other property.

Personal belongings (no car) - £2,000

Nat West current account - £3,000

HSBC savings account - £10,000

Santander savings account - £5,000

Life Policy with LifeCo Ltd - £10,000 – the proceeds are payable to the estate

Pensions – Astrid was in receipt of state and occupational pensions totalling £2,500 per month. Damian is not sure whether there has been an under- or overpayment of pension nor if a lump sum payment is due under the occupational pension.

Debts:

M & S credit card – Astrid always paid the monthly balance in full. Probably £200 owed.

Funeral costs - £5,100 – paid by Damian

Administration Expenses:

3 death certificates – paid for by Damian – cost can be confirmed.

Gifts:

Astrid made no lifetime gifts.

Her nil rate band is therefore £325,000.

Based on the above values, it does not appear that Astrid's estate will be liable to inheritance tax as it is within the available nil rate band. This is subject to verification of the above figures.

Next steps

Write to Damian confirming the above advice.

Request Damian to:

- a) supply the exact date of death values of the assets and liabilities of the estate;
- b) supply a copy of the letter confirming that the proceeds of the life policy are payable to the estate; and
- c) make enquiries of the occupational pension provider as to whether any payments are due.

Consider whether the payment(s), if any, from the occupational pension provider form part of the taxable estate.

SAMPLE B (see note on sample answers, page 14)

Attendance Note

Please note that, rather than copying from the notes taken in the interview, candidates can refer to these notes in the attendance note. The sample answers have been presented as one document, not referring to the interview notes, for ease of reading.

Client: Damian Robins of 46 Cunningham Crescent, London SE23 0AD. Tel 07715 766654

Matter: Estate of Astrid Green

Information provided by client:

Astrid Green

Date of death: 1 April 202#

Address: see will

Date of birth: 19.1.1950

Retired

Divorced in 2011

Family

See details provided by client prior to interview

Assets

99 Castle Street – approx. £250,000, no mortgage, the only property owned by Astrid

Personal belongings – approx. £2,000

Nat West current account – approx. £3,000

HSBC savings account – approx. £10,000

Santander savings account – approx. £5,000

Life Policy with LifeCo Ltd - £10,000 – proceeds are payable to the estate

Pensions –state and occupational pensions approx. £2,500 per month. Client will check under- or overpayment of pensions

Debts

M & S credit card – client believes about £200 is owed

Funeral costs - £5,100

The Will

Executors:

Clause 2 appoints client as an executor. Client is willing to act but Joan would prefer not to act. Joan has not helped in the administration of the estate so far and can therefore choose not to act. Colin is now former husband and cannot act. Client wants to know if he can act alone. This is likely to be the case but this needs to be checked as there is a minor beneficiary (see below) and two executors may be needed.

Distribution

All assets appear to be solely owned by Astrid and will form part of the distribution estate. If a lump sum is due from the pension it may be payable at the discretion of the pension provider in which case it will not form part of the distribution estate.

Clause 3

The clock mentioned in clause 3 (a) was stolen before Astrid died and the gift will therefore fail/adeem.

Gaynor and Susan Green are each entitled to £500 under clause 3(b) but Susan will have to wait until she is 18 to receive her gift.

As 500 shares in ABC plc were not owned by Astrid when she died, the estate will have to buy these for the beneficiary.

Clause 4

The rest of the estate passes to the children of Joan Knight. There are no issues in relation to Fiona receiving her half share. Unfortunately, Jack died recently. Enquiries will need to be made as to whether he made a will or died intestate.

Inheritance tax

Astrid's estate appears to be within her nil rate band of £325,000 and, therefore, no inheritance tax will be payable. This is subject to confirmation of the above figures and assumes Astrid has not made any gifts in the last 7 years which reduced her nil rate band (this should be checked as not raised in interview). This also assumes that no lump sum is due from the occupational pension provider or, if a payment is due, it is payable at the discretion of the pension trustees and is outside the estate.

Next steps

We should write to the client confirming the above advice.