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Legal writing

■ MAKE SURE YOU KNOW

This chapter covers the skill of legal writing in the context of business organisations, rules and procedures. Legal writing in this area is one of the skills that will be assessed on day three of the SQE2 written skills assessments (see the Introduction for more detail). You must consider who your client is and who your writing is directed towards. For example, if your client is a company and the recipient of your letter/email is one of the directors, you should be mindful of whether any content should be kept confidential and not disclosed to any of the other director(s). The same issue may apply to partnerships.

As with the other written skills assessments, remember that your knowledge of legal principles and practices associated with business organisations, business taxation, money laundering and financial services will be tested, as well as the application of contract law to these principles. We therefore recommend that you read this revision guide once you are familiar with the contents of **Revise SQE: Business Law and Practice** and **Revise SQE: Contract Law**.

This chapter provides examples of how different scenarios relating to business organisations, rules and procedures, taxation for businesses, money laundering and financial services could arise in the context of a SQE2 legal writing assessment.

■ SQE ASSESSMENT ADVICE

As you work through this chapter, remember to pay particular attention in your revision to:

- the inclusion of relevant facts in the sample answers
- the way in which letters and emails are structured and how this could be applied generally
- the ways in which the advice given is tailored to the client/recipient and the information you are given about them in the sample questions
- how the sample answers use clear and concise language
- how the law is applied to the client's situation
- the way in which any ethical or professional conduct issues are identified and resolved.

■ INTRODUCTION TO LEGAL WRITING IN BUSINESS ORGANISATIONS, RULES AND PROCEDURES

The SQE2 assessment usually includes scenarios which occur in day-to-day legal practice. A key aspect of practising in the field of business organisations, rules and procedures is the ability to follow advice given by a solicitor to a client after a meeting or over the telephone with a clearly articulated written communication. Your SQE2 assessment in legal writing will be based on reading a memo or email from a partner which asks you to provide advice to a client. This will usually follow a fictitious telephone call or meeting which has taken place between the partner and the client. The question will give you some direction about the areas you need to cover in your letter or email, but you will need to apply your knowledge of those areas to the scenario and communicate the relevant advice to the client clearly and

concisely in writing. This chapter will provide examples of how you can do this and meet the criteria for the SQE2 legal writing assessment at the same time.

The key to success in your SQE2 legal writing assessment is approaching the question in a structured manner. Try adopting the following approach:

1. Once you have read the question, write down the key legal and procedural points that you feel need to be communicated to the client.
2. You can then form the structure of the letter or email you are asked to write around those key legal points by using headings or subheadings.
3. Write your answer.
4. Review your answer, keeping in mind the SQE2 legal writing assessment criteria.

Assessment technique

When reviewing your answer, read the draft and ask yourself whether or not it answers the client's question(s) clearly and concisely. Avoid using long sentences and overly technical language, and plan the structure of your letter or email based around what you have been asked to consider.

SQE2 legal writing assessment criteria

Try to remember these points as you construct your answer:

Skills

1. Include relevant facts.
2. Use a logical structure.
3. Advice/content is client- and recipient-focused.
4. Use clear, precise, concise and acceptable language which is appropriate to the recipient.

Application of law

5. Apply the law correctly to the client's situation.
6. 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.

In chapter 1 of *Revise SQE: Business Law and Practice*, we considered the different options for forming a business. Question 1 below demonstrates how your knowledge of this topic could be tested in the context and format of a SQE2 legal writing assessment.

■ QUESTION 1

Email to candidate

From: Partner
Sent: 1 May 202#
To: Candidate
Subject: Business development

I am acting for Grace Olancey who occasionally sells various handmade crochet shawls at local craft markets. Grace was recently approached by Jacinta Arkwright, the owner of Crochet By Hand, a boutique based in Chelsea who would like to sell her shawls in her shops.

Grace is very keen to have her items in a physical shop, particularly one such as Crochet By Hand as she no longer enjoys the market day experience, especially when the weather is wet and she has to work at the stall all day. Jacinta seemed to think that Grace's shawls would fly off the shelves in her shop and she could charge a hefty premium, significantly more than she receives from her market sales. Jacinta has provided draft Heads of Terms setting out the key provisions that have been agreed between Grace and Jacinta, which I have attached (Attachment 1).

When Grace telephoned me she was very excited about Jacinta's proposal, as she thinks other small boutique stores might offer similar deals. Grace sought advice on setting up a business to sell the shawls and we discussed the possibility of her incorporating a company - 'Graces Ltd' - through which to sell her shawls. Grace mentioned that she has substantial savings set aside for her daughter's education. I ran through the differences between operating as a sole trader and a company, and said I would set this out in a letter for her to review.

Unfortunately, I have been called to deal with another urgent matter, so I need you to write the letter for me.

I would like you to explain to Grace Olancey:

- **the ownership, management and liability differences between a company as compared with a sole trader**
- **any registration or other formalities that she should be aware of**
- **how Grace's tax treatment might be affected if she opted to trade as a company.**

Grace is not a lawyer, so it is important that your explanation is clear and simple. You should be aware that Grace is very intelligent and curious, wanting to understand everything, so you will need to provide brief explanations where appropriate.

Thanks

Partner

Note to candidates:

Please assume that all issues in relation to client care/money laundering have already been dealt with by the partner.

Attachment 1

DRAFT Heads of Terms:

These Heads of Terms set out the key terms of agreement
BETWEEN

Crochet By Hand Ltd, whose registered office is Fulmers LLP, Chelsea House, Fulham Road SW16 3LP (company number X493321) ('CBH')

Grace Olancey of 15 Dreams Close, Dartford RM20 3SR ('Grace')

1. Supply
Grace to supply 10 units of 150 cm x 100 cm handmade woollen crocheted scarves to CBH per month.
2. Price:
CBH to make the scarves available for sale to the public in the retail shop at a minimum price of £35 + VAT per unit, unless otherwise agreed between CBH and Grace.

3. Payment:
CBH to pay Grace 60% of any sales proceeds received from the sale of Grace's scarves to the public.
4. Term:
Trial for three months commencing on [1 April 202#]

* * *

■ YOUR TURN

Have a go at answering question 1, remembering the guidance on pages 57–58.

- Refer to the structured approach in the SRA's assessment criteria on page 58.
- Create a list of the most salient legal points raised by the question.
- Timings are important: you will need to prepare and write your answer in 30 minutes.

SQE1 Functioning legal knowledge link

Remember from chapter 1 of *Revise SQE: Business Law and Practice* that a company as an incorporated business will have its own legal identity and its liability limited shares, and will need to be registered with Companies House. There is no legal distinction between a sole trader and its owner/manager. The liability of a sole trader is unlimited.

EVALUATING YOUR ANSWER

When you have attempted question 1, mark it yourself against the SQE2 legal writing assessment criteria. Do you think your attempt met the threshold standard?

Now compare your attempt with the following key legal points and two sample answers to question 1. A circled number indicates that commentary is provided for this part of the answer. The commentary will explain whether or not the sample is likely to meet the threshold SQE2 standard.

➔ Key legal points: Question 1

- A sole trader is a self-employed person who is the sole owner and who runs their business. A company is a person separate from its shareholders and directors. Directors run a company; shareholders own shares in the company.
- The liability of a sole trader is unlimited. The business owner is personally and directly responsible for all debts and liabilities incurred by the business, so the owner's personal assets might be at risk. The liability of the owners of a company that is limited by shares (i.e. the shareholders) is capped to the amount they have agreed to pay for the shares. Owners' personal assets are not at risk.
- There are generally no formal requirements or legal processes required to set up the business of a sole trader, other than the requirement to register with HMRC. Companies have ongoing formalities, decision-making, filing and disclosure requirements.
- A sole trader might be required to register for VAT, but otherwise any profit received from the business would be taxed as the business owners' income and subject to income tax. Companies pay corporation tax on both their income profits and their capital gains.

■ SAMPLE ANSWER 1 TO QUESTION 1

[The law firm's address and contact details]

15 Dreams Close
Dartford
RM20 3SR

1 May 202#

Dear Grace

Sole traders and companies

I refer to our recent telephone conversation in which we discussed the two trading options available to you to sell your shawls:

- a) sole trader; and
- b) company. ①

I have set out below the key differences relating to the:

- ownership, management and liability
- registration and other formalities; and
- tax treatment

of the two different alternative business media options for you to consider. ②

1. Sole trader ③

A 'sole trader' is self-employed and runs their own business.

Ownership and management

There is no distinction between the business and its owners and managers for a sole trader. You would be the owner and the manager of the business. ④

Liability

There is no legal separation between your liability and the liability of the sole trader. So you, as the business owner, would be personally and directly responsible for all debts and liabilities incurred. Any personal assets you may have, including the savings set aside for your daughter's education, even if not used in your shawl business, will be at risk if you are unable to satisfy the debts of your business. This could have the serious consequence of resulting in your bankruptcy. ⑤

Registration and other formalities

There are no specific formalities or legal processes required to set up the business. However, as a sole trader, you will be self-employed and need to register with HMRC.

Tax treatment

You may be required to register for VAT if your sales exceed a certain threshold, which is currently over £85,000. As a sole trader, you would pay income tax on your business' trading profits and capital gains tax on its capital gains.

2. Graces Ltd

We spoke about incorporating Graces Ltd as a private company, limited by shares with you being the only shareholder and the only director.

Ownership and management

Companies are separate legal entities, which means that they can own property, enter into contracts, owe money, etc, even though it will be you making the shawls and other products to generate the sales. So Graces Ltd, and not you personally, would enter into a contract with Crochet By Hand for the supply of shawls.

Shareholders own shares in the company, while directors have general management powers to run the company on a day-to-day basis. You would assume both these roles (which is often the case for small businesses) but you should note that they are separate and distinct roles in law.

Liability

The company's liability would be limited to value of the shares. So, if Graces Ltd was incorporated with 100 shares of £1 each, and you were the only shareholder, you would invest £100 in the company from the outset. Your personal liability to contribute towards the debts of Graces Ltd would then be capped at that £100. If Graces Ltd was wound up, you would have no further liability as you would already have fully paid the shares. Your daughter's education fund would not be impacted. For smaller businesses, this separation of liability is one of the main benefits of being a company.

Registration/formalities

There are some formalities and reporting requirements that companies must comply with, with which the firm would be happy to help. **6** For example:

- Every company must be registered with Companies House, and certain information about the company will be freely accessible to the public.
- A company must have a registered office, which is an address to which all formal notices can be sent. This firm serves as a registered office for many of our client companies, and can provide this service to Graces Ltd.
- Every company must have at least one director. This is a person who has management responsibility for the company and as stated above, I assume you would want this role. **7**

The company must comply with other ongoing formality, decision-making, filing and disclosure requirements, with which the firm can assist you.

Tax treatment

Companies pay corporation tax on both their income profits and their capital gains. This is separate to any income tax you might pay in your personal capacity.

Conclusion

The benefits of limited liability may be significant for a small business such as yours, particularly if you want to keep your personal assets (including the savings for your daughter's education) separate from those of your business. However, you should be aware that there are costs, administrative burdens and disclosure requirements associated with setting up and running a limited company. **8**

I would be happy to assist with whichever option you choose and look forward to receiving your further information.

Yours sincerely

Partner

COMMENTARY

- 1 The introductory paragraph sets out the purpose of the letter. If you consider this from the perspective of a non-legally trained client, it explains why the candidate is writing to them and what information they will be able to learn from reading this letter.
- 2 Note how this explicitly refers to the information that was set out in the instructions, ensuring only relevant facts are included.
- 3 The letter is split into two paragraphs, 1 and 2, each addressing the alternative business medium. This provides a logical structure to the letter, enabling it to be clear and recipient-focused.
- 4 The legal position is stated in the first sentence under the heading 'Ownership and management'. An explanation is then provided by stating how the law would apply to the client's situation. By providing this illustration and using 'you' instead of 'the sole trader', the letter is made more recipient-focused, and uses language appropriate for the recipient, who is not a lawyer.
- 5 The approach adopted in point 4 above is applied to all the subsequent paragraphs: stating the law and then providing an example of how it would apply to the client. Here the letter expressly refers to the client's savings, using clear, precise, concise, acceptable and appropriate language.
- 6 Where appropriate in the letter, reference is made to the ability of the firm to provide additional support. This demonstrates to the examiner that the candidate is aware that additional formalities and requirements exist, which might go beyond the scope of this letter, but that they would be addressed by the firm if the client chose to pursue running the business through a company. It shows that the candidate is applying the law correctly and comprehensively to the client's situation.
- 7 Note the use of bullet points to assist with the clarity of the structure and the provision of comprehensive advice to the client. Only a few examples are provided here, to provide the client with a broad understanding of the type of formalities and requirements a company might be subject to. This shows to the examiner that the candidate understands the client's situation and is applying the relevant law or principles to the situation.
- 8 The letter concludes with a brief summary of the positives of setting up a company, while highlighting the drawbacks insofar as they relate to the client's concerns. This demonstrates a client-focused approach.

Does this answer meet the threshold?

The sample answer above contains all of the information that the client requires and that the candidate has been asked to provide. It is therefore likely to meet the threshold standard for the SQE2 legal writing assessment. The answer covers all aspects of the assessment criteria for legal writing. The relevant facts are used and the law applied correctly and comprehensively to the client's situation. The logical structure adopted in the letter and the use of headings and bullet points assist in providing clear and recipient-focused advice. Remember to bear in mind the assessment criteria as you form your answer so that you address all of the SRA's requirements.

Now consider the second sample answer to question 1.

■ SAMPLE ANSWER 2 TO QUESTION 1

[The law firm's address and contact details]

15 Dreams Close
Dartford
RM20 3SR

1 May 202#

Dear Ms Olancey ①

Your business

I refer with great enthusiasm and excitement to the telephone conversation we had yesterday and set out below a summary of our discussion. ②

There are many differences between companies and sole traders. The key ones are: ③

1. Shareholders own shares in a company; collectively the shareholders 'own' the company. Shares could be ordinary shares or preference shares. ④ Sole traders are owned by the individual running the business.
2. Companies are artificial, separate legal entities run by the directors. Sole traders are not separate from the person who runs the business. ⑤
3. A company's liability is limited to its share capital. A sole trader's liability is uncapped and can, in the worst case scenario, result in the bankruptcy of the individual running the business. ⑥
4. Companies need to be registered at Companies House. They will receive a certificate of incorporation, which is like a company's birth certificate, and a company registration number with which it can be identified at Companies House. ⑦ In addition, a company must submit annual reports, copies of shareholders' resolutions, various forms and other documents to Companies House at key times. There is no register for sole traders.
5. Companies pay a tax specific to them known as corporation tax. Any profits of an income or a capital nature that a company makes will be subject to corporation tax. A sole trader, just like a partner in a partnership, ⑧ pays income tax on the profits it generates.

On balance, I think operating as a sole trader would be the most appropriate option for you. ⑨

Do call me if you would like to discuss any of the above further.

Yours sincerely

Partner

COMMENTARY

- ① The instructions referred to Grace rather than Ms Olancey, so the letter should follow that lead and be addressed to Grace, rather than Ms Olancey.
- ② The heading and the opening paragraph provide no guidance as to what is to follow in the letter. They are neither clear, precise nor concise. The introductory paragraph should set out the purpose of the letter – why the candidate is writing it and what information it contains/what questions it answers.

- 3 While the letter does consider and set out the differences between companies and sole traders, the advice provided is very brief. More client- and recipient-focused advice could have been provided in relation to each of the paragraphs 1–5, to apply the law correctly to the client’s situation in a way which is user-friendly, helpful and clear to the client.
- 4 The reference to ordinary or preference shares is unnecessary and might confuse the client, particularly as no further explanation is given.
- 5 While this correctly states the legal principle, it does not explain how that principle would apply to the client. It is important to provide the advice in context to ensure that it is client-focused.
- 6 As with point 4 above, this states the principle, but does not apply the law to the client’s situation. What does it mean to the client if the company’s liability is limited to the share capital? There is no reference or consideration given to the client’s sizeable savings put aside for her daughter’s education. This would be an example of needing to include and address the relevant facts, and apply the law to the client’s situation.
- 7 Information about the certificate of incorporation and the company’s registration number is not really relevant. It does not address the client’s instructions. The next sentence incorrectly states that all shareholders’ resolutions need to be submitted to Companies House, so the law is not correctly applied to the client’s situation.
- 8 The reference to partners in a partnership is irrelevant and unnecessary. It might also confuse a client.
- 9 The decision to operate as a sole trader appears to have been made without a clear analysis of the client’s considerations.

Does this answer meet the threshold?

When assessing the second letter against the SQE2 legal writing assessment criteria, it is unlikely that this letter would meet the threshold standard for the SQE2 legal writing assessment. While this letter does address some of the key points asked for in the instructions, it fails to provide the advice in a clear and recipient-focused manner. It does not include the relevant facts, but includes several irrelevant facts, and does not apply the law correctly to the client’s situation. Remember to bear in mind the assessment criteria as you form your answer so that you address all of the SRA’s requirements.

As you know, SQE2 can assess any of the areas on the SQE1 Business Law and Practice specification. Below is another example of how a different part of the specification could arise in the context of legal writing on SQE2.

■ QUESTION 2

Email to candidate

From: Partner

Sent: 1 June 202#

To: Candidate

Subject: Expansion of Poppy’s Pots Ltd (The Haven, Swan Lane, Hastings TN34 9LT)

We’ve been acting for Poppy’s Pots Ltd (‘PPL’) for some years. We helped set up the company and the firm is PPL’s registered office. PPL makes and sells a range of handmade, hand-painted outdoor plant pots. It has been developing its product range and now has a selection of pots to cater for indoor plants that are proving very popular for city offices. The outdoor pots are popular with many stately homes.

Tunde Belucchi is the Managing Director of PPL. He just telephoned me to say he thinks now is a good time for PPL to acquire its own office space with a bespoke showroom. To date, PPL has been exhibiting its products from Tunde's garden office site in Hastings. Tunde is looking at various locations in the south-east of England.

PPL currently has a business mortgage from the Bank of Hastings (the 'Bank') in respect of the garden office in Hastings. There is £200,000 outstanding on this mortgage and PPL has never missed a payment. The Bank also has a floating charge over PPL's stock. Tunde thinks the floating charge was registered with Companies House back in February 2020.

PPL has received a loan offer from Jellogs Bank plc for £740,000 for the purchase of the new office space and showroom, subject to a fixed charge over those premises and a floating charge over PPL's stock.

I explained to Tunde the different types of security available for loans, what happens when both banks have floating charges over the same assets and the purpose of registering charges.

Please could you write a letter to Tunde, explaining:

- 1. the difference between a mortgage, fixed charge and floating charge;**
- 2. what happens when creditors have floating charges over the same assets; and**
- 3. what if the Bank of Hastings' floating charge was not validly registered.**

Tunde is not a lawyer, so it is important that your explanation is clear and simple. He is intelligent and astute, and will insist on understanding everything, so you will need to provide brief legal explanations where appropriate.

Thanks

Partner

Note to candidates:

Please assume that all issues in relation to client care/money laundering have already been dealt with by the partner.

* * *

■ YOUR TURN

Have a go at answering question 2, remembering the guidance on pages 57–58.

- Refer to the structured approach in the SRA's assessment criteria on page 58.
- Create a list of the most salient points raised by the question.
- Timings are important: you will need to prepare and write your answer in 30 minutes.

SQE1 Functioning legal knowledge link

Remember from chapter 5 of *Revise SQE: Business Law and Practice* that it is possible for lenders to agree to a different arrangement as to their relative priority by entering into a deed of priority.

EVALUATING YOUR ANSWER

When you have attempted question 2, mark it yourself against the SQE2 legal writing assessment criteria. Do you think your attempt met the threshold standard?

Now compare your attempt with the following key legal points and two sample answers to question 2. A circled number indicates that commentary is provided for this part of the answer. The commentary will explain whether or not the sample is likely to meet the threshold SQE2 standard.

➔ Key legal points: Question 2

- Businesses may have loans from banks or other credit providers. These loans are often secured.
- A mortgage involves the transfer of legal title to the mortgagee (lender) with re-conveyance/transfer back to the mortgagor (borrower) when the debt is satisfied. It gives the lender an immediate right to possession, and in the case of land, a mortgage is usually created by a fixed charge by deed.
- A fixed charge is a charge taken over a particular asset or assets. The consent of the lender is required in order to deal with the assets.
- A floating charge is a charge taken over a particular class of asset(s) owned from time to time (eg tangible stock and/or intangible intellectual property) and can only be granted by a company/LLP. The company can deal with the asset(s) without the consent of the lender until crystallisation, as until then, it 'floats over' rather than 'fixes on' the assets.
- On crystallisation, a floating charge 'fixes' on the assets in the particular class at that time and it becomes a fixed charge. Crystallisation usually occurs when a company becomes insolvent or any other event occurs which the charge specifies will cause crystallisation (eg non-payment, ceasing to trade or other default).
- Fixed charges take priority over floating charges. Where there are multiple validly created charges of the same type, the first in time (based on the date of creation) will have priority unless the document creating the floating charge contains a negative pledge clause and the later fixed charge has notice of this prohibition at the time when it takes its charge.
- A charge that is not registered in time is void against a liquidator or any creditor of the company (ss 859H(3) and (4) Companies Act 2006). The debt will be payable immediately, but will be unsecured (s 859H(4)).

■ SAMPLE ANSWER 1 TO QUESTION 2

[The law firm's address and contact details]

Poppy's Pots
The Haven
Swan Lane
Hastings TN34 9LT

1 June 202#

Dear Tunde

Poppy's Pots Ltd – Security of loans

It was a pleasure talking to you yesterday – I'm very pleased to hear of the growth of Poppy's Pots Ltd. ①

As promised, I have set out below a brief summary of the different types of secured loans that Poppy's Pots might have, what happens when two banks have a floating charge over the same assets and what happens if charges are not validly registered. ②

1. Mortgage, fixed charge and floating charge

Lenders usually require security for a loan. This can be by way of a mortgage, a fixed charge or a floating charge. In the event of insolvency, lenders with secured loans have priority over those with unsecured loans. There is a particular order of priority for the recovery of secured loans that is prescribed by statute: loans secured by a mortgage get first priority, followed by fixed charge holders, and then floating charge holders (provided the charges are validly registered). ③

Mortgage

Security that is subject to a legal mortgage is effectively held by the lender. The legal title is transferred to the lender in exchange for the loan. When the loan is repaid, the legal title is transferred back to the borrower. ④

The Bank of Hastings has a legal mortgage over the garden office. So, the legal title to the garden office was transferred to the Bank in exchange for the loan. When Poppy's Pots repays the loan, the legal title of the office will be transferred back. If Poppy's Pots fails to pay the debt, the Bank of Hastings will have the immediate right to possess the garden office.

Fixed charge

A fixed charge is a charge taken over a particular asset. Poppy's Pots would retain the legal title to the assets, but the consent of the lender would be required to deal with the assets.

Jellogs Bank is offering to lend Poppy's Pots £740,000 subject to a fixed charge over the new office space and showroom. This means that Jellogs' consent would be needed to sell that office in the future.

Floating charge

A floating charge is a charge taken over a particular class of assets that usually changes from time to time, such as the stock. The borrower is allowed to deal with the assets, until and unless a specified trigger event occurs. ⑤ Common trigger events include ceasing to trade or non-payment. If such a trigger event occurs, the charge then becomes fixed over the assets as they existed at the time of the event. The borrower is then unable to deal with those assets without the lender's consent. If the charge is over stock, which is vital for a trading company, this restriction can be extremely debilitating.

The Bank of Hastings currently has a floating charge over all Poppy's Pots' stock. So, the company can trade its pots without the Bank's consent until and unless a trigger event occurs. Obviously, if the company ever experiences any financial issues, I would strongly advise that you liaise with the Bank at the earliest opportunity. ⑥

2. Floating charges over the same assets

Where there is more than one floating charge over the same asset, the first one created normally takes priority over later charges.

So, assuming the Bank of Hastings' floating charge over Poppy's Pots' stock (being the pots) was validly registered, that charge would take priority over any later floating charges created over Poppy's Pots' stock.

The Bank of Hastings would have the right to any proceeds from the sale of Poppy's Pots' stock to satisfy its outstanding debt, and if there was any stock still available to sell, Jellogs Bank could then receive the proceeds from the sale of those remaining pots.

3. What if the Bank of Hastings' floating charge was not validly registered?

If a charge is not validly registered, and the borrower then goes into insolvency, the loan would become immediately payable, but be void against a liquidator or a creditor of the company. The loan would be treated as an unsecured debt.

You said you recall the Bank of Hastings charge being registered. I will check the records at Companies House to confirm this position. If it is not validly registered, and Poppy's Pots takes a loan from Jellogs Bank giving Jellogs a floating charge over Poppy's Pots' stock, Jellogs' charge over the stock would take priority over any floating charge held by Bank of Hastings. ⑦

If you would like to discuss the security of your loans further, do please contact me.

I wish you the best of luck with your search for the right premises.

Yours sincerely

Partner

COMMENTARY

- ① Note that the letter refers to the company by its full name, and not the abbreviation used in the partner's instruction to the candidate. Generally, you should avoid defining terms in a letter to the client as this may have the effect of making the letter appear too 'legal', which may detract from the aim of the letter being client- and recipient-focused.
- ② As with sample answer 1 to question 1, it is good practice to inform the client at the beginning of the letter about its purpose and what information they can glean from it. This ensures that the letter is client-focused.
- ③ This provides a bit of explanation to the client about the difference between secured and unsecured loans and the priority of secured loans. Without this background context, the client would not be able to clearly determine why there is such an importance between the different types of security. Again, this background enables the advice and the content of the letter to be clear and client-focused, using language which is appropriate to the recipient.
- ④ Note how the legal principle is stated, and then the law is applied to the client's situation. This demonstrates the advice being client- and recipient-focused, while applying the law correctly to the client's situation. This approach is adopted throughout the letter.
- ⑤ Note that the term 'crystallisation' is not used when explaining this point. This is an example of legal terminology that might be considered unnecessary. It is important to use clear, precise, concise and acceptable language which is appropriate to the recipient.
- ⑥ This last sentence is included just to advise the client of how important it is to liaise with the Bank if the financial position changes, while acknowledging that it is not currently relevant.
- ⑦ Clear explanation of the next steps is provided here, comprehensively demonstrating the candidate's application of the law to Poppy's Pots' situation.

Does this answer meet the threshold?

The sample answer above contains all of the information that the client requires and that the candidate has been asked to provide. It is therefore likely to meet the threshold standard

for the SQE2 legal writing assessment. Clear, succinct and accurate language is used throughout, and the letter adopts a logical structure, using headings and sub-headings and numbering. It refers to the parties concerned by name (Poppy's Pots, or the various banks, rather than just 'the lender' or 'the borrower'), making the letter more recipient-focused. Remember to bear in mind the assessment criteria as you form your answer so that you address all of the SRA's requirements.

Now consider the second sample answer to question 2.

■ SAMPLE ANSWER 2 TO QUESTION 2

[The law firm's address and contact details]

Poppy's Pots
The Haven
Swan Lane
Hastings TN34 9LT

1 June 202#

Dear Poppy Pots ①

Secured loans

You asked me to write to you to follow up our recent phone conversation. ②

1. Mortgage, fixed charge and floating charge

A mortgage is a secured loan. Normally the security is a property. For example, you might have a mortgage over your residential home. Mortgages are often executed as a deed, meaning that they are signed in the presence of witnesses. ③ If you fail to pay your mortgage, the lender will have the right to repossess your house. ④ This is often the key condition that is emphasised in any mortgage. ⑤

A fixed charge is when the security is over a permanent, unchanging asset, such as property or plant and machinery.

A floating charge is when the security is over an asset that might change from day to day, such as a company's stock. ⑥

2. Floating charges over the same assets

It is possible to have charges over the same assets. For example, a property might be subject to a first and second charge. This means that if the borrower defaulted and the security was enforced, the first charge holder would have priority over the second charge holder. So the second charge holder would only be able to recover their debt after the first charge holder had been paid in full. ⑦ A floating charge over property would not be appropriate as property as an asset doesn't generally change from day to day (unless a company was buying and selling property as part of its trade, in which case the property would effectively be treated as 'stock'). ⑧ A floating charge could be given over a company's current bank account. If the borrower defaulted, this would normally be considered an event of crystallisation so the floating charge would crystallise and become a fixed charge over the company's current bank account as it was at the time of the event of crystallisation. ⑨

3. Invalid charge

Charges should be registered at Companies House by submitting Form MR01 ¹⁰ with a fee. The form should set out the details of the charge – the date it was created, the charge holder, etc. Details of any negative pledge clause should also be included in this form as it is a public document that is available by a simple search at Companies House. ¹¹

If a charge is not validly registered at Companies House, it is void against a company, creditor, liquidator and administrator in accordance with section 859 Companies Act. ¹² The charge is effectively treated as an unsecured charge. As you know, unsecured charge holders rank very low in the statutory priority of creditors and thus the loan is unlikely to be repaid in full in such an event. ¹³

If you need any further assistance, please do not hesitate to contact me – I should be happy to help. ¹⁴

Yours

Partner

COMMENTARY

- 1 The letter should be addressed to Tunde Belucchi, as the managing director of Poppy's Pots, not to Poppy's Pots directly. Note also that the candidate has not stated the company's name correctly, which is Poppy's Pots.
- 2 The opening sentence does not inform the client about the letter's purpose and what information they can glean from it.
- 3 This is irrelevant for the purposes of this letter. You must always be mindful of the instructions and be sure that the information contained in your letter addresses the problem(s) presented by the client.
- 4 This is incorrect. A legal mortgage transfers legal ownership of the mortgaged asset to the lender unless the asset is land. The instructions do not refer to Tunde's home being security for the business, so this is an example of failing to apply the law correctly to the client's situation.
- 5 This is irrelevant – see point 3 above.
- 6 There is no application of the law to the client's situation. How do mortgages and fixed and floating charges apply to the client? Why are they relevant to the client? The use of headings does help understanding, but the lack of context detracts from this. As with point 3 above, in the assessment you must address your client's situation in your letter; do not just state the law, but go on to explain how or why it relates to the client's issue(s). So here, the Bank of Hastings already has a floating charge over PPL's stock and Jellogs Bank wants a floating charge over the same asset. Jellogs Bank also wants a fixed charge over PPL's new office space.
- 7 The client was concerned with floating charges, not fixed charges. The advice provided is therefore not clear, nor client-focused. The law is not correctly applied to the client's situation, as the law applied relates to charge holders in general, not specifically to floating charge holders.
- 8 This does not explain the law with any clarity, nor does it relate back to the instructions. See point 3 above.
- 9 Crystallising events and 'crystallisation' are technical terms. The explanation of these terms in this letter is not client-focused. When writing a letter in the SQE2 assessment, be mindful of your reader and explain any law clearly and comprehensively.
- 10 As with point 9 above, the reference to the form is too technical. It does not address the instructions and is not one of the three questions on which the candidate is

asked to advise. Keep your reader in mind, and be sure to write clearly, concisely and comprehensively.

- 11 Reference is made to a negative pledge clause without explanation as to what this is. The client may be unaware of its impact. In addition, consider whether this is relevant to what the client is asking.
- 12 The client does not need to be advised of which section of the Companies Act addresses registration of charges. The client is not a lawyer and is unlikely to look this up. Remember to keep the letter client-focused.
- 13 Again, there is no application of the law. The legal position of an unsecured creditor is stated, but not applied to the client's situation – if Bank of Hastings' floating charge was not validly registered, it would be treated as an unsecured creditor.
- 14 'I should be happy to help' is not an appropriate way to sign off a letter. It is too informal. Similarly, the candidate should have written 'Yours sincerely' rather than 'Yours' on the line below.

Does this answer meet the threshold?

When assessing the second letter against the SQE2 legal writing assessment criteria, it is unlikely that this letter would meet the threshold standard for the SQE2 legal writing assessment. Limited relevant facts are used, and the law is mostly correctly identified but not applied to the client's situation. The letter adopts a logical structure with headings and numbering correlating to the client's questions, which contributes to the clarity of the answer. However, more needs to be done to make the advice clear and recipient-focused. Remember the assessment criteria as you write your answer so that you address all of the SRA's requirements.

■ KEY POINT CHECKLIST

This chapter has covered the following key knowledge points:

- The SQE2 assessment criteria for legal writing and applying them in the context of business organisations, rules and procedures.
- A suggested structure for approaching an SQE2 legal writing question.
- Examples of answers in the format of letters, which are either likely or unlikely to meet the SQE2 threshold standard, with full commentary on their strengths and weaknesses.

■ SUMMARY AND REFLECTION

To meet the threshold standard in the SQE2 legal writing assessment, take your time to read the question properly, think about the legal points the question is asking of you and sketch out a short plan to follow for the structure of your letter.

Remember that the SQE2 assessment requires you to apply the law both correctly *and* comprehensively. You need to consider the relevant law and explain how it is applicable to the wider context of the client's scenario as well as to the more obvious narrow points.

You will be penalised in the assessment for using too much legal jargon or legalistic terms without explaining them properly, as the client recipient might not understand what you mean. Practise writing letters in client-friendly language that a non-lawyer reader would be able to understand.

Now take the time to reflect and consider what you might still need to work on, and whether you feel completely confident in your legal writing skills in the context of business organisations, rules and procedures.