

Solicitors' Introduction and Referral Code 1990

Professional Ethics

Last amended 7 October 2004

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Solicitors' Introduction and Referral Code 1990

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Code dated 18th July 1990 promulgated by the Council of the Law Society with the concurrence of the Master of the Rolls under Rule 3 of the Solicitors' Practice Rules 1990, regulating the introduction of clients to and by solicitors, registered European lawyers, registered foreign lawyers and recognised bodies practising in England and Wales.

Introduction

- (1) This code states the principles to be observed in relation to the introduction of clients by third parties to solicitors or by solicitors to third parties.
- (2) The code does not apply to introductions and referrals between lawyers.
- (3) Non-compliance, evasion or disregard of the code could represent not only a breach of Practice Rule 3 (introductions and referrals) but also a breach of Practice Rule 1 (basic principles) or one of the other practice rules, and conduct unbecoming a solicitor of the Supreme Court or other lawyer.
- (4) Those wishing to advertise the services of solicitors to whom they refer work should be encouraged to publicise their adherence to the code by means of a notice on the following lines:

"We comply with the Solicitors' Introduction and Referral Code published by the Law Society, and any solicitor [or registered European lawyer] to whom we may refer you is an independent professional from whom you will receive impartial and confidential advice. You are free to choose another solicitor [or registered European lawyer]."
- (5) In this code all references to individual practice rules are references to the Solicitors' Practice Rules 1990 and all words have the meanings assigned to them in Rule 18 of those rules.
- (6) The code will come into force on 1st September 1990.

Section 1: The basic principles

- (1) Solicitors must always retain their professional independence and their ability to advise their clients fearlessly and objectively. Solicitors should never permit the requirements of an introducer to undermine this independence.
- (2) In making or accepting introductions or referrals, solicitors must do nothing which would be likely to compromise or impair any of the principles set out in Practice Rule 1:
 - (a) the solicitor's independence or integrity;
 - (b) a person's freedom to instruct a solicitor of his or her choice;
 - (c) the solicitor's duty to act in the best interests of the client;

- (d) the good repute of the solicitor or the solicitor's profession;
 - (e) the solicitor's proper standard of work;
 - (f) the solicitor's duty to the Court.
- (3) Practice Rule 9 prevents a solicitor from entering into any arrangement with a claims assessor for the introduction of personal injury clients to the solicitor.
- (4) Practice Rule 12 makes provision in respect of introductions and referrals in the field of investment business. In particular the rule prevents a solicitor from acting as an appointed representative as defined in the Financial Services and Markets Act 2000 other than by having a separate business which is the appointed representative of an independent financial adviser.

Note

An independent financial adviser is a financial adviser authorised under the Financial Services and Markets Act 2000, or subsequent relevant legislation, who is not constrained to recommend to clients or effect for them transactions in some investments but not others, with some persons but not others; or to refrain from doing so.

Section 2: Introduction or referral of business to solicitors

- (1) Solicitors may discuss and make known to potential introducers the basis on which they would be prepared to accept instructions and the fees they would charge to clients referred.
- (2) Solicitors should draw the attention of potential introducers to the provisions of this code and the relevant provisions of the Solicitors' Publicity Code.
- (3) Solicitors must not reward introducers by the payment of commission or otherwise except as permitted by Sections 2A and 3A below. However, this does not prevent normal hospitality. A solicitor may refer clients to an introducer provided the solicitor complies with Section 4 below.
- (4) Solicitors should not allow themselves to become so reliant on a limited number of sources of referrals that the interests of an introducer affect the advice given by the solicitor to clients.
- (5) Solicitors should be particularly conscious of the need to advise impartially and independently clients referred by introducers. They should ensure that the wish to avoid offending the introducer does not colour the advice given to such clients.
- (6) Where a tied agent refers to a solicitor a client who is proposing to take out a company life policy, the solicitor should, where necessary, have regard to the suitability of that policy in each particular case.

- (7) Solicitors must ensure that they alone are responsible for any decisions taken in relation to the nature, style or extent of their practices.
- (8) This code does not affect the need for the solicitor to communicate directly with the client to obtain or confirm instructions, in the process of providing advice and at all appropriate stages of the transaction.
- (9) Each firm should keep a record of agreements for the introduction of work.
- (10) Each firm should conduct a review at six-monthly intervals, which should check:
 - (a) that the provisions of this code have been complied with;
 - (b) that referred clients have received impartial advice which has not been tainted by the relationship between the firm and the introducer; and
 - (c) the income arising from each agreement for the introduction of business.
- (11) Where, so far as can be reasonably ascertained, more than 20 per cent of a firm's income during the period under review arises from a single source of introduction of business, the firm should consider whether steps should be taken to reduce that proportion.
- (12) Factors to be taken into account in considering whether to reduce the proportion include:
 - (a) the percentage of income deriving from that source;
 - (b) the number of clients introduced by that source;
 - (c) the nature of the clients and the nature of the work; and
 - (d) whether the introducer could be affected by the advice given by the solicitor to the client.

Section 2A: Payments for referrals

- (1) A solicitor must not make any payment to a third party in relation to the introduction of clients to the solicitor, except as permitted below.
- (2) Solicitors may enter into agreements under this section for referrals of clients with introducers who undertake in such agreements to comply with the terms of this code.
- (3) A solicitor may make a payment to a third party introducer only where immediately upon receiving the referral and before accepting instructions to act the solicitor provides the client with all relevant information concerning the referral and, in particular, the amount of any payment.
- (4) The solicitor must also be satisfied that the introducer:
 - (a) has provided the client with all information relevant to the client concerning the referral before the referral took place and, in particular, the amount of any payment;
 - (b) has not acquired the client as a consequence of marketing or publicity or other activities which, if done by a solicitor, would be in breach of any of the Solicitors' Practice Rules and in particular by "cold calling"; and

- (c) does not, under the arrangement, influence or constrain the solicitor's professional judgement in relation to the advice given to the client.
- (5) If the solicitor has reason to believe that the introducer is breaching terms of the agreement required by this section the solicitor must take all reasonable steps to procure that the breach is remedied. If the introducer persists in breaches the solicitor must terminate the agreement in respect of future referrals.
- (6) A solicitor must not make a referral payment if at the time of the referral the solicitor intends to act for that person with the benefit of legal aid, or in any criminal proceedings.
- (7) For the purpose of sub-section (1) above, a payment includes any other consideration but does not include normal hospitality, proper disbursements or normal business expenses.

Section 3: Solicitor agreeing to be paid by a third party to do work for the third party's customers other than conveyancing work

- (1) In addition to the other provisions of this code the following requirements should be observed in relation to agreements for the introduction of clients/business to solicitors under which the solicitor agrees with the introducer to be paid by the introducer to do work other than conveyancing work for the introducer's customers.
- (2) The terms of the agreement should be set out in writing and a copy available for inspection by the Law Society.
- (3) The solicitor may agree to be remunerated by the introducer either on a case by case basis or on an hourly, monthly or any other appropriate basis.
- (4) The solicitor should ensure that any agreement between the introducer and customer for the provision of services under this section includes:
 - (a) express mention of the independence of the solicitor's professional advice;
 - (b) a provision that control of the professional work should remain in the hands of the solicitor subject to the instructions of the client; and
 - (c) a provision that information disclosed by the client to the solicitor should not be disclosed to the introducer unless the client consents.

Section 3A: Contractual referrals for conveyancing

- (1) In addition to the other provisions of this code the following requirements must be observed in relation to agreements for the introduction of clients/business to solicitors under which the solicitor agrees with the introducer to be paid by the introducer to provide conveyancing services for the introducer's customers.

Agreements for referrals

- (2) Solicitors may enter into agreements under this section for referrals for conveyancing services only with introducers who undertake in such agreements to comply with the terms of this code.
- (3) Referrals under this section must not be made where the introducer is a seller or seller's agent and the conveyancing services are to be provided to the buyer.
- (4) The agreement between the solicitor and the introducer must be set out in writing. A copy of the agreement and of records of the six-monthly reviews carried out under paragraph 10 of Section 2 of this code in relation to transactions under the agreement must be retained by the solicitor for production to the Law Society on request.
- (5) If the solicitor has reason to believe that the introducer is breaching terms of the agreement required by this section the solicitor must take all reasonable steps to procure that the breach is remedied. If the introducer persists in breaches the solicitor must terminate the agreement in respect of future referrals.
- (6) The agreement between the introducer and the solicitor must not include any provisions which would:
 - (a) compromise, infringe or impair any of the principles set out in Rule 1 of the Solicitors' Practice Rules or any duties owed by the solicitor to the introducer's customer by virtue of the solicitor/client relationship and/or the requirements of professional conduct; or
 - (b) restrict the scope of the duties which the solicitor owes to the customer in relation to the services agreed to be provided by virtue of the professional relationship between solicitor and client; or
 - (c) interfere with or inhibit the solicitor's responsibility for the control of the professional work.

Publicity as to conveyancing services

- (7) In publicity material of the introducer which includes reference to any service that may be provided by the solicitor, any reference to the charge for conveyancing services must be clearly expressed and must not be misleading. It must be clear whether disbursements and VAT are included.

Notice to customer

- (8) Before making a referral the introducer must give the customer in writing:
 - (a) details of the conveyancing service to be provided under the terms of the referral;
 - (b) notification of:
 - (i) the charge payable by the customer to the introducer for the conveyancing services;
 - (ii) the liability for VAT and disbursements and how these are to be discharged; and
 - (iii) what charge if any is to be made if the transaction does not proceed to completion or if the solicitor is unable to continue to act;

- (c) notification of the amount the introducer will be paying to the solicitor for the provision of conveyancing services relating to the customer's transaction;
- (d) a statement to the effect that the charge for conveyancing services will not be affected whether or not the customer takes other products or services offered by the introducer, and that the availability and price of other services will not be affected whether the customer chooses to instruct a solicitor (or registered European lawyer) under the referral or decides to instruct another solicitor or conveyancer; and
- (e) a statement to the effect that the advice and service of the solicitor (or registered European lawyer) to whom the customer is to be referred will remain independent and subject to the instructions of the customer.

Solicitor's terms of business

- (9) Where a solicitor accepts instructions on referral under this section the solicitor must provide the client with written terms of business which must include:
 - (a) details of the conveyancing service to be provided under the referral and if appropriate any other services the solicitor is to provide and on what terms;
 - (b) a statement that any advice given by the solicitor (or registered European lawyer) will be independent and that the client is free to raise questions on all aspects of the transaction;
 - (c) confirmation that information disclosed by the client to the solicitor (or registered European lawyer) will not be disclosed to the introducer unless the client consents; but that where the solicitor (or registered European lawyer) is also acting for the introducer in the same matter and a conflict of interest arises, the solicitor (or registered European lawyer) might be obliged to cease acting.

Definition

- (10) In this section references to a conveyancing service or services include services to be provided to the introducer if the solicitor is also to be instructed to act for the introducer.

Section 4: Referral of clients by solicitors

- (1) If a solicitor recommends that a client use a particular firm, agency or business, the solicitor must do so in good faith, judging what is in the client's best interest. A solicitor should not enter into any agreement or association which would restrict the solicitor's freedom to recommend any particular firm, agency or business.
- (2) The referral to a tied agent of a client requiring life insurance would not discharge the solicitor's duty to give his client independent advice. In such circumstances, any referral should be to an independent intermediary.

- (3) If the best interests of the client require it, a solicitor may refer a client requiring a mortgage to a tied agent, provided that the client is informed that the agent offers products from only one company.
- (4) In relation to commission received for the introduction of clients' business to third parties, Practice Rule 10 applies.