

## **Solicitors' Practice Rules 1990 and associated rules and codes**

### **Professional Ethics**

Information updated March 2007

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# Solicitors' Practice Rules 1990

## Professional Ethics

Last amended 12 January 2007

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# Solicitors' Practice Rules 1990

Last amended 12 January 2007

*Rules dated 18th July 1990*

*made by the Council of the Law Society,*

*with the concurrence of the Master of the Rolls under section 31 of the Solicitors Act 1974 and section 9 of the Administration of Justice Act 1985*

*and the approval of the Lord Chancellor under Part II of Schedule 4 to the Courts and Legal Services Act 1990,*

- ◆ *regulating the English and Welsh practices of solicitors, registered European lawyers, registered foreign lawyers and recognised bodies;*
- ◆ *and, in respect of Rule 12 only, regulating:*
  - the practices of solicitors and recognised bodies in any part of the world;*
  - the practices of registered European lawyers in any part of the United Kingdom; and*
  - the practices of registered foreign lawyers in England and Wales;**in the conduct of investment business in, into or from the United Kingdom.*

## Rule A (Scope of the rules)

- (1) These rules apply to all forms of practice of a solicitor of the Supreme Court.
- (2) The rules also extend to all regulated individuals and all regulated practices – see Rule 18(2) (interpretation).
- (3) The rules do not apply to practice from an office outside England and Wales – except for Rule 12 (investment business), the geographical scope of which is set out in the rule.

## Rule 1 (Basic principles)

A solicitor shall not do anything in the course of practising as a solicitor, or permit another person to do anything on his or her behalf, which compromises or impairs or is likely to compromise or impair any of the following:

- (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 of the solicitor's profession;
- (e) the solicitor's proper standard of work;
- (f) the solicitor's duty to the Court.

## Rule 2 (Publicity)

Solicitors may at their discretion publicise their practices, or permit other persons to do so, or publicise the businesses or activities of other persons, provided there is no breach of these rules and provided there is compliance with a Solicitors' Publicity Code promulgated from time to time by the Council of the Law Society with the concurrence of the Master of the Rolls.

## Rule 3 (Introductions and referrals)

[See also guidance [Disclosure of funding, fee sharing and referral arrangements](#) issued in March 2004 and [Referral fees – Guidance](#) issued on 21 December 2005.]

Solicitors may accept introductions and referrals of business from other persons and may make introductions and refer business to other persons, provided there is no breach of these rules and provided there is compliance with a Solicitors' Introduction and Referral Code promulgated from time to time by the Council of the Law Society with the concurrence of the Master of the Rolls.

### Note

*Article 5.4 of the CCBE Code prohibits the payment of referral fees in a solicitor's "European cross-border activities" (see Rule 16). It is therefore prohibited for solicitors to pay referral fees to a non-lawyer introducer situated in a CCBE state other than the UK. Article 5.4 does not prevent fee-sharing arrangements between lawyers on a proper basis.*

## Rule 4 (Employed solicitors)

- (1)
  - (a) Solicitors who are employees of non-solicitors shall not as part of their employment do for any person other than their employer work which is or could be done by a solicitor acting as such, save as permitted by an Employed Solicitors Code promulgated from time to time by the Council of the Law Society with the concurrence of the Master of the Rolls.
  - (b) In sub-paragraph (a) above, "employee" includes a solicitor of the Supreme Court or registered European lawyer practising in house as the director of a company which is not a recognised body, and "employer" and "employment" shall be construed accordingly.
  - (c) Solicitors who are employees of:
    - (i) a registered European lawyer practising as sole principal;
    - (ii) a lawyers' partnership which includes a solicitor of the Supreme Court, registered European lawyer or recognised body; or
    - (iii) a recognised body;are not "employees of non-solicitors" for the purpose of this rule, and are therefore not subject to paragraph (1) of the rule.
- (2)
  - (a) Solicitors of the Supreme Court or registered European lawyers who are employees of a registered European lawyer practising as sole principal shall not draw or prepare any instrument or papers, or make any application or lodge any document, relating to the conveyancing of land

or the administration of estates, which is reserved to qualified persons by the Solicitors Act 1974, or supervise or assume responsibility for any such work, unless the principal is a registered European lawyer qualified to do the work under regulation 12 or 13 of the European Communities (Lawyer's Practice) Regulations 2000.

- (b) Solicitors of the Supreme Court or registered European lawyers who are employees of a regulated practice which is a partnership all of whose members are foreign lawyers and/or European lawyers' recognised bodies shall not do or supervise or assume responsibility for any of the work referred to in paragraph (2)(a) of this rule unless the partnership has at least one member who or which is
  - (i) a registered European lawyer qualified to do the work under regulation 12 or 13 of the European Communities (Lawyer's Practice) Regulations 2000; or
  - (ii) a company (a recognised body) with a director who is such a person; or
  - (iii) a limited liability partnership (a recognised body) with a member who is such a person.
- (c) Registered European lawyers who are directors of a European lawyers' recognised body which is a company, or solicitors of the Supreme Court or registered European lawyers who are employees of such a company, shall not do or supervise or assume responsibility for any of the work referred to in paragraph (2)(a) of this rule unless the company has at least one director who is a registered European lawyer qualified to do the work under regulation 12 or 13 of the European Communities (Lawyer's Practice) Regulations 2000.
- (d) Registered European lawyers who are members of a European lawyers' recognised body which is a limited liability partnership, or solicitors of the Supreme Court or registered European lawyers who are employees of such a limited liability partnership, shall not do or supervise or assume responsibility for any of the work referred to in paragraph (2)(a) of this rule unless the limited liability partnership has at least one member who or which is:
  - (i) a registered European lawyer qualified to do the work under regulation 12 or 13 of the European Communities (Lawyer's Practice) Regulations 2000; or
  - (ii) a company (a recognised body) with a director who is such a person; or
  - (iii) another limited liability partnership (a recognised body) with a member who is such a person.
- (e) In sub-paragraphs (b) to (d) above, "European lawyers' recognised body" means:
  - (i) a recognised body which is a company and which has no director who is a solicitor of the Supreme Court; or
  - (ii) a recognised body which is a limited liability partnership and has no member who or which is:
    - (A) a solicitor of the Supreme Court; or
    - (B) a company (a recognised body) with a director who is a solicitor of the Supreme Court; or

- (C) another limited liability partnership (a recognised body) with a member who is a solicitor of the Supreme Court.

## Rule 5 (Providing services other than as a solicitor)

Solicitors must comply with the Solicitors' Separate Business Code in controlling, actively participating in or operating (in each case alone, or by or with others) a business which:

- (a) provides any service which may properly be provided by a solicitor's practice, and
- (b) is not itself:
  - (i) a regulated practice as defined in Rule 18(2) of these rules; or
  - (ii) a practice permitted to solicitors of the Supreme Court under the Solicitors' Overseas Practice Rules; or
  - (iii) a practice in Scotland or Northern Ireland permitted to registered European lawyers under the Solicitors' Overseas Practice Rules.

## Rule 6 (Avoiding conflicts of interest in conveyancing, property selling and mortgage related services)

### (1) (General)

This rule sets out circumstances in which a solicitor may act for more than one party in conveyancing, property selling or mortgage related services, in connection with:

- (i) the transfer of land for value at arm's length;
- (ii) the grant or assignment of a lease, or some other interest in land, for value at arm's length; or
- (iii) the grant of a mortgage of land.

The rule must be read in the light of the notes.

### Notes

- (i) **"Solicitor"** (except where the notes specify otherwise) **means a regulated individual or regulated practice, and any associated practice, and includes a SEAL; and**
  - *"associated practices" are practices with at least one principal in common;*
  - *a "principal" is an individual or body corporate who or which is:*
    - (a) *a sole practitioner,*
    - (b) *in the case of a practice which is a partnership*
      - (A) *a partner in the practice (including a partner who is not qualified to do conveyancing, such as a registered foreign lawyer),*
      - (B) *a director of or shareowner in a company which has a share capital and which is a partner in the practice,*

- (C) a director or member of a company which does not have a share capital and which is a partner in the practice, and
- (D) a member of a limited liability partnership which is a partner in the practice,
- (c) in the case of a practice which is a company with a share capital, a director of or shareowner in the company, and the company itself,
- (d) in the case of a practice which is a company without a share capital, a director or member of the company, and the company itself,
- (e) in the case of a practice which is a limited liability partnership:
  - (A) a member of the practice,
  - (B) the limited liability partnership itself,
  - (C) a director of or shareowner in a company which has a share capital and which is a member of the practice,
  - (D) a director or member of a company which does not have a share capital and which is a member of the practice, and
  - (E) a member of another limited liability partnership which is a member of the practice;
- a **"SEAL" (Solicitors' Estate Agency Limited)** means a recognised body which:
  - (a) does not undertake conveyancing;
  - (b) is owned jointly by at least four participating practices which do not have any principals in common and none of which has majority control; and
  - (c) is conducted from accommodation physically divided from, and clearly differentiated from that of any participating practice; and
- a "participating practice" means a solicitor's private practice one or more of whose principals is a shareowner in the SEAL (if the SEAL is a company with a share capital) or a member of the SEAL (if the SEAL is a company without a share capital or a limited liability partnership).
- (ii) "Property selling" means negotiating the sale for the seller.
- (iii) "Mortgage related services" means advising on or arranging a mortgage, or providing mortgage-related financial services, for a buyer; and
  - "seller" and "buyer" include lessor and lessee.
- (iv) Whether a transaction is "at arm's length" will depend on the relationship between the parties and the context of the transaction, and will not necessarily follow from the fact that a transaction is at market value, or is stated to be on arm's length terms.

A transaction would not usually be at arm's length, for example, if the parties are:

- related by blood, adoption or marriage;
- the settlor of a trust and the trustees;
- the trustees of a trust and its beneficiary or the beneficiary's relative;
- personal representatives and a beneficiary;
- the trustees of separate trusts for the same family;
- a sole trader or partners and a limited company set up to enable the business to be incorporated;

- *associated companies (i.e. where one is a holding company and the other is its subsidiary within the meaning of the Companies Act 1985, or both are subsidiaries of the same holding company); or*
  - *a local authority and a related body within the meaning of paragraph 6(b) of the Employed Solicitors' Code 1990.*
- (v) *"Mortgage" includes a remortgage.*
- (vi) *Nothing in the rule allows a solicitor to act in breach of Rule 6A(5) (acting for seller and one of two prospective buyers), or any other rule or principle of professional conduct.*
- (vii) *Nothing in the rule allows a registered foreign lawyer or a registered European lawyer to undertake conveyancing unless, in the case of a registered European lawyer, he or she is authorised to do so under regulation 12 of the European Communities (Lawyer's Practice) Regulations 2000 – see Rule 4(2), note (ja) to Rule 13, Rule 18(1)(b)(iv) and note (ii) to Rule 18(1) of these rules, and Rule 2(3) of the Solicitors' Incorporated Practice Rules.*

## **(2) (Solicitor acting for seller and buyer)**

- (a) A solicitor must not act for seller and buyer:
- (i) without the written consent of both parties;
  - (ii) if a conflict of interest exists or arises; or
  - (iii) if the seller is selling or leasing as a builder or developer.
- (b) Otherwise, a solicitor may act for seller and buyer, but only if:
- (i) both parties are established clients; or
  - (ii) the consideration is £10,000 or less and the transaction is not the grant of a lease; or
  - (iii) there is no other qualified conveyancer in the area whom either the seller or the buyer could reasonably be expected to consult; or
  - (iv) seller and buyer are represented by two separate offices in different localities, and:
    - (A) different solicitors, who normally work at each office, conduct or supervise the transaction for seller and buyer; and
    - (B) no office of the practice (or an associated practice) referred either client to the office conducting his or her transaction; or
  - (v) the only way in which the solicitor is acting for the buyer is in providing mortgage related services; or
  - (vi) the only way in which the solicitor is acting for the seller is in providing property selling services through a SEAL.
- (c) When a solicitor's practice (including a SEAL) acts in the property selling for the seller and acts for the buyer, the following additional conditions must be met:
- (i) different individuals must conduct the work for the seller and the work for the buyer; and if the individuals conducting the work need supervision, they must be supervised by different solicitors; and
  - (ii) the solicitor must inform the seller in writing, before accepting instructions to deal with the property selling, of any services which might be offered to a buyer, whether through the same practice or any practice associated with it; and

- (iii) the solicitor must explain to the buyer, before the buyer gives consent to the arrangement:
  - (A) the implications of a conflict of interest arising; and
  - (B) the solicitor's financial interest in the sale going through; and
  - (C) if the solicitor proposes to provide mortgage related services to the buyer through a SEAL which is also acting for the seller, that the solicitor cannot advise the buyer on the merits of the purchase.

## Notes

- (i) *If a builder or developer acquires a property in part exchange, and sells it on without development, he or she is not, for the purpose of this rule, selling "as a builder or developer".*
- (ii) *The test of whether a person is an "established client" is an objective one; that is, whether a reasonable solicitor would regard the person as an established client.*
  - *A seller or buyer who is instructing the solicitor for the first time is not an established client.*
  - *An individual related by blood, adoption or marriage to an established client counts as an established client.*
  - *A person counts as an established client if selling or buying jointly with an established client.*
- (iii) *The consideration will only count as £10,000 or less if the value of any property given in exchange or part exchange is taken into account.*
- (iv) *Even where none of the other exceptions apply, a SEAL may act for the seller, and provide mortgage related services to the buyer; one of the participating practices may do the buyer's conveyancing, and another participating practice may do the seller's conveyancing.*
- (v) *"Solicitor"*
  - *in paragraph (2)(b)(iv)(A), means any solicitor of the Supreme Court or registered European lawyer who is conducting or supervising the transaction; and*
  - *in paragraph (2)(c)(i), means the solicitor of the Supreme Court or registered European lawyer who is supervising the transaction;*

*and if the work is conveyancing, the registered European lawyer must in each case be qualified to do conveyancing under regulation 12 of the European Communities (Lawyer's Practice) Regulations 2000 – see Rule 18(1)(b)(iv) and note (ii) to Rule 18(1).*

### (3) (Solicitor acting for lender and borrower)

- (a) A solicitor must not act for both lender and borrower on the grant of a mortgage of land:
  - (i) if a conflict of interest exists or arises;
  - (ii) on the grant of an individual mortgage of land at arm's length;
  - (iii) if, in the case of a standard mortgage of property to be used as the borrower's private residence only, the lender's mortgage instructions extend beyond the limitations contained in paragraphs (3)(c) and (3)(e), or do not permit the use of the certificate of title required by paragraph (3)(d); or

- (iv) if, in the case of any other standard mortgage, the lender's mortgage instructions extend beyond the limitations contained in paragraphs (3)(c) and (3)(e).
- (b) A solicitor who proposes to act for both lender and borrower on the grant of a standard mortgage of land, must first inform the lender in writing of the circumstances if:
  - (i) the solicitor or a member of his or her immediate family is a borrower; or
  - (ii) the solicitor proposes to act for seller, buyer, and lender in the same transaction.
- (c) A solicitor acting for both lender and borrower in a standard mortgage may only accept or act upon instructions from the lender which are limited to the following matters:
  - (i) taking reasonable steps to check the identity of the borrower (and anyone else required to sign the mortgage deed or other document connected with the mortgage) by reference to a document or documents, such as a passport, precisely specified in writing by the lender;  
  
following the guidance in the Law Society's "green card" warning on property fraud and "blue card" warning on money laundering;  
  
checking that the seller's solicitors or licensed conveyancers (if unknown to the solicitor) appear in a current legal directory or hold practising certificates issued by their professional body;  
  
and, in the case of a lender with no branch office within reasonable proximity of the borrower, carrying out the money laundering checks precisely specified in writing by the lender;
  - (ii) making appropriate searches relating to the property in public registers (for example, local searches, commons registration searches, mining searches), and reporting any results specified by the lender or which the solicitor considers may adversely affect the lender; or effecting search insurance;
  - (iii) making enquiries on legal matters relating to the property reasonably specified by the lender, and reporting the replies;
  - (iv) reporting the purchase price stated in the transfer and on how the borrower says that the purchase money (other than the mortgage advance) is to be provided; and reporting if the solicitor will not have control over the payment of all the purchase money (other than a deposit paid to an estate agent or a reservation fee paid to a builder or developer);
  - (v) reporting if the seller or the borrower (if the property is already owned by the borrower) has not owned or been the registered owner of the property for at least six months;
  - (vi) if the lender does not arrange insurance, confirming receipt of satisfactory evidence that the buildings insurance is in place for at least the sum required by the lender and covers the risks specified by the lender; giving notice to the insurer of the lender's interest and requesting confirmation that the insurer will notify the lender if the policy is not renewed or is cancelled; and supplying particulars of the insurance and the last premium receipt to the lender;

- (vii) investigating title to the property and appurtenant rights; reporting any defects revealed, advising on the need for any consequential statutory declarations or indemnity insurance, and approving and effecting indemnity cover if required by the lender; and reporting if the solicitor is aware of any rights needed for the use or enjoyment of the property over other land;
- (viii) reporting on any financial charges (for example, improvement or repair grants or Housing Act discounts) secured on the property revealed by the solicitor's searches and enquiries which will affect the property after completion of the mortgage;
- (ix) in the case of a leasehold property, confirming that the lease contains the terms stipulated by the lender and does not include any terms specified by the lender as unacceptable; obtaining a suitable deed of variation or indemnity insurance if the terms of the lease are unsatisfactory; enquiring of the seller or the borrower (if the property is already owned by the borrower) as to any known breaches of covenant by the landlord or any superior landlord and reporting any such breaches to the lender; reporting if the solicitor becomes aware of the landlord's absence or insolvency; making a company search and checking the last three years' published accounts of any management company with responsibilities under the lease; if the borrower is required to be a shareholder in the management company, obtaining the share certificate, a blank stock transfer form signed by the borrower and a copy of the memorandum and articles of association; obtaining any necessary consent to or prior approval of the assignment and mortgage; obtaining a clear receipt for the last payment of rent and service charge; and serving notice of the assignment and mortgage on the landlord;
- (ixA) in the case of a commonhold unit, confirming receipt of satisfactory evidence that common parts insurance is in place for at least the sum required by the lender and covers the risks specified by the lender; confirming that the commonhold community statement contains the terms specified by the lender and does not include any restrictions on occupation or use specified by the lender as unacceptable; enquiring of the seller (or the borrower if the property is already owned by the borrower) and the commonhold association as to any known breaches of the commonhold community statement by the commonhold association or any unit-holder, and reporting any such breaches to the lender; making a company search to verify that the commonhold association is in existence and remains registered, and that there is no registered indication that it is to be wound up; obtaining the last three years' published accounts of the commonhold association and reporting any apparent problems with the association to the lender; obtaining a commonhold unit information certificate; and serving notice of the transfer and mortgage of the commonhold unit on the commonhold association;
- (x) if the property is subject to a letting, checking that the type of letting and its terms comply with the lender's requirements;
- (xi) making appropriate pre-completion searches, including a bankruptcy search against the borrower, any other person in whom the legal estate is vested and any guarantor;

- (xii) receiving, releasing and transmitting the mortgage advance, including asking for any final inspection needed and dealing with any retentions and cashbacks;
- (xiii) procuring execution of the mortgage deed and form of guarantee as appropriate by the persons whose identities have been checked in accordance with any requirements of the lender under paragraph (3)(c)(i) as those of the borrower, any other person in whom the legal estate is vested and any guarantor; obtaining their signatures to the forms of undertaking required by the lender in relation to the use, occupation or physical state of the property; and complying with the lender's requirements if any document is to be executed under a power of attorney;
- (xiv) asking the borrower for confirmation that the information about occupants given in the mortgage instructions or offer is correct; obtaining consents in the form required by the lender from existing or prospective occupiers of the property aged 17 or over specified by the lender, or of whom the solicitor is aware;
- (xv) advising the borrower on the terms of any document required by the lender to be signed by the borrower;
- (xvi) advising any other person required to sign any document on the terms of that document or, if there is a conflict of interest between that person and the borrower or the lender, advising that person on the need for separate legal advice and arranging for him or her to see an independent conveyancer;
- (xvii) obtaining the legal transfer of the property to the mortgagor;
- (xviii) procuring the redemption of (A) existing mortgages on property the subject of any associated sale of which the solicitor is aware, and (B) any other mortgages secured against a property located in England or Wales made by an identified lender where an identified account number or numbers or a property address has been given by the lender;
- (xix) ensuring the redemption or postponement of existing mortgages on the property, and registering the mortgage with the priority required by the lender;
- (xx) making administrative arrangements in relation to any collateral security, such as an endowment policy, or in relation to any collateral warranty or guarantee relating to the physical condition of the property, such as NHBC documentation;
- (xxi) registering the transfer and mortgage;
- (xxii) giving legal advice on any matters reported on under this paragraph (3)(c), suggesting courses of action open to the lender, and complying with the lender's instructions on the action to be taken;
- (xxiii) disclosing any relationship specified by the lender between the solicitor and borrower;
- (xxiv) storing safely the title deeds and documents pending registration and delivery to or as directed by the lender;
- (xxv) retaining the information contained in the solicitor's conveyancing file for at least six years from the date of the mortgage.

- (d) In addition, a solicitor acting for both lender and borrower in a standard mortgage of property to be used as the borrower's private residence only:
- (i) must use the certificate of title set out in the Appendix, or as substituted from time to time by the Council with the concurrence of the Master of the Rolls, ("the approved certificate"); and
  - (ii) unless the lender has certified that its mortgage instructions are subject to the limitations contained in paragraphs (3)(c) and (3)(e), must notify the lender on receipt of instructions that the approved certificate will be used, and that the solicitor's duties to the lender are limited to the matters contained in the approved certificate.
- (See also note (iii) below.)
- (e) The terms of this rule will prevail in the event of any ambiguity in the lender's instructions, or discrepancy between the instructions and paragraph (3)(c) or the approved certificate.

### Anti-avoidance

- (f) (i) Subject to paragraph (3)(f)(ii), a solicitor who is acting only for the borrower in a standard mortgage of property must not accept or act upon any requirements by way of undertaking, warranty, guarantee or otherwise of the lender, the lender's solicitor or other agent which extend beyond the limitations contained in paragraph (3)(c).
- (ii) Provided the property is not to be used solely as the borrower's private residence, paragraph (3)(f)(i) does not prevent the borrower's solicitor from giving any form of certificate of title recognised from time to time by the Council of the Law Society (a "recognised certificate"). Additions or amendments which arise from the individual transaction may be made to the text of a recognised certificate but, to the extent to which they create an increased or additional obligation, must not extend beyond the limitations contained in paragraph (3)(c).

### Notes

- (i) *A mortgage is a "standard mortgage" where (1) it is provided in the normal course of the lender's activities; (2) a significant part of the lender's activities consists of lending; and (3) the mortgage is on standard terms. An "individual mortgage" is any other mortgage.*
- *A mortgage will not be on standard terms if material terms in any of the documents relating to the mortgage transaction are negotiated between the lender's solicitor and the borrower's solicitor contemporaneously with effecting the mortgage. In commercial transactions, the element of negotiation will often relate to the facility letter or facility agreement rather than the mortgage deed itself.*
  - *Provided there has been no contemporaneous negotiation of material terms between the parties' solicitors, a mortgage will be on standard terms where the lender uses a prescribed form of mortgage deed. Minor variations, such as the usual clause limiting the liability of trustee mortgagors, are not regarded as material and do not alter the nature of these terms as standard.*

- *In addition to its normal standard terms, a lender may have a different set or sets of standard terms applicable to specialised types of borrower, such as registered social landlords. Provided these terms are applied by the lender to all equivalent specialist borrowers or have been agreed between the lender and a specialist borrower as applicable to all transactions between them, they will constitute standard terms for the purposes of the rule.*
  - *The lender and the borrower must be separately represented on the grant of an individual mortgage at arm's length (see paragraph (3)(a)(ii)). The rest of the rule is not then applicable.*
  - *A solicitor may act for both lender and borrower in a standard mortgage, provided (1) there is no conflict of interests; (2) the mortgage instructions do not go beyond the limits set out in paragraph (3)(c); and (3) in the case of a property to be used solely as the borrower's private residence, the approved certificate of title set out in the Appendix is used (see paragraphs (3)(a)(iii)–(iv) and note (iv)).*
  - *The limitations of paragraph (3)(c) also apply to a standard mortgage where the lender and the borrower are separately represented (see paragraph (3)(f)(i) which includes certificates of title). However, paragraph (3)(f)(ii) allows the borrower's solicitor, in a transaction where the property is not to be used solely as the borrower's private residence, to give a certificate of title in any form recognised by the Law Society. A solicitor also remains free to give any other form of certificate which complies with the rule.*
  - *There may be cases where the lapse of time between the mortgage offer and completion (for example, when new properties are added) results in use of an earlier edition of a recognised certificate. That is acceptable.*
- (ii) *A solicitor will not be in breach of paragraphs (3)(a)(iii)–(iv) or (c) if the lender has certified that its mortgage instructions and documents sent pursuant to those instructions are subject to the limitations set out in paragraphs (3)(c) and (e), and certifies any subsequent instructions and documents in the same way. If there is no certification, a solicitor acting in a transaction involving the charge of property to be used solely as the borrower's private residence must notify the lender that the approved certificate of title will be used and that the solicitor's duties to the lender will be limited accordingly (see paragraph (3)(d)(ii)). In other types of transaction, the solicitor should draw the lender's attention to the provisions of paragraphs (3)(c) and (e) and state that he or she cannot act on any instructions which extend beyond the matters contained in paragraph (3)(c).*
- (iii) *As an alternative to printing the approved certificate for each transaction, it is acceptable for a lender to use a short form certificate of title which incorporates the approved certificate by reference. The form must include in the following order:*
- *the title "Certificate of Title";*
  - *the contents of the details box in the order set out in the approved certificate (use of two columns is acceptable) but with details not required shaded out or stated not to be required; and*
  - *the wording "We, the conveyancers named above, give the Certificate of Title set out in the Appendix to Rule 6(3) of the Solicitors' Practice Rules 1990 as if the same were set out in full, subject to the limitations contained in it."*

*Administrative details, such as a request for cheque, may follow the Certificate of Title.*

- (iv) *The approved certificate is only required for a transaction where the property is to be used solely as the borrower's private residence. The approved certificate need not, therefore, be used for investment properties such as blocks of flats, business premises such as shops (even if living accommodation is attached), or "buy to let mortgages" on properties which are not intended for owner-occupation.*
- (v) *"Solicitor" in paragraph (3)(b)(i) means any principal in the practice (or an associated practice), and any solicitor of the Supreme Court or registered European lawyer who is conducting or supervising the transaction, whether or not he or she is a principal; and*
- *"immediate family" means spouse, children, parents, brothers and sisters.*
- "Solicitor" in sub-paragraphs (i)–(xxv) of paragraph (3)(c) means the practice instructed and any solicitor of the Supreme Court or registered European lawyer conducting or supervising the transaction.*
- (vi) *The lender must be informed of the circumstances, in accordance with paragraph (3)(b) so that the lender can decide whether or not to instruct the solicitor.*
- (vii) *A lender's instructions (see paragraph (3)(c)(xxiii)) may require a wider disclosure of a solicitor's circumstances than paragraph (3)(b) requires; and a solicitor must assess whether the circumstances give rise to a conflict. For example, there will be a conflict between lender and borrower if the solicitor becomes involved in negotiations relating to the terms of the loan. A conflict might arise from the relationship a solicitor has with the borrower – for example, if the solicitor is the borrower's creditor or debtor or the borrower's business associate or co-habitant.*
- (viii) *In relation to paragraph (3)(f)(ii), the limitations contained in paragraph (3)(c) will not apply to the insertion into a recognised certificate of any information required by that certificate. For example, where the recognised certificate requires details of the parties' repairing obligations under a lease of the property, the borrower's solicitor may provide a summary of the relevant terms of the lease despite the general limitation contained in paragraph (3)(c)(ix). However, any additions or amendments to the text of a recognised certificate to suit a particular transaction must not, to the extent to which they create an increased or additional obligation, extend beyond the limitations contained in paragraph (3)(c)*
- (ix) *Many lenders require their solicitor to check the vires of corporate borrowers and that the correct procedures have been followed to ensure the validity of the mortgage. Paragraph (3)(c)(xiii) enables lenders to impose duties on solicitors in relation to the execution of the mortgage and guarantee. Within this context it is perfectly proper for a lender to require a solicitor to obtain such information as the circumstances may require in relation to the capacity of, or execution of documents by, the borrower, third party mortgagor or guarantor; for instance, by way of certified copy minutes or an opinion from a foreign lawyer as to the validity and enforceability of the security or guarantee given by a foreign registered company. There is no reason why solicitors should not assist corporate clients by drafting minutes or board resolutions. Solicitors should not, however, themselves certify the validity or passing of resolutions unless they were present at the meeting and have verified that it was convened and held strictly in accordance with all relevant requirements.*
- (x) *Paragraph (3)(c)(xx) allows a solicitor to accept instructions from a lender to carry out administrative arrangements in relation to any collateral security. This expression includes associated debentures, collateral warranties, second charges, rent assignments, charges over rent income and deeds of priority. The administrative arrangements necessarily include the preparation and execution of the relevant documents and subsequent registration.*

## Appendix

### Certificate of title

#### *Details box*

TO: (Lender)
Lender's Reference or Account No:
The Borrower:
Property:
Title Number:
Mortgage Advance:
Price stated in transfer:
Completion Date:
Conveyancer's Name & Address:
Conveyancer's Reference:
Conveyancer's bank, sort code and account number:
Date of instructions:

#### **WE THE CONVEYANCERS NAMED ABOVE CERTIFY** as follows:

- (1) If so instructed, we have checked the identity of the Borrower (and anyone else required to sign the mortgage deed or other document connected with the mortgage) by reference to the document or documents precisely specified in writing by you.
- (2) Except as otherwise disclosed to you in writing:
  - (i) we have investigated the title to the Property, we are not aware of any other financial charges secured on the Property which will affect the Property after completion of the mortgage and, upon completion of the mortgage, both you and the mortgagor (whose identity has been checked in accordance with paragraph (1) above) will have a good and marketable title to the Property and to appurtenant rights free from prior mortgages or charges and from onerous encumbrances which title will be registered with absolute title;
  - (ii) we have compared the extent of the Property shown on any plan provided by you against relevant plans in the title deeds and/or the description of the Property in any valuation which you have supplied to us, and in our opinion there are no material discrepancies;
  - (iii) the assumptions stated by the valuer about the title (its tenure, easements, boundaries and restrictions on use) in any valuation which you have supplied to us are correct;
  - (iv) if the Property is leasehold the terms of the lease accord with your instructions, including any requirements you have for covenants by the Landlord and/or a management company and/or by a deed of mutual covenant for the insurance, repair and maintenance of the structure, exterior and common parts of any building of which the Property forms part, and we have or will obtain on or before completion a clear receipt for the last payment of rent and service charge;

- (ivA) if the property is a commonhold unit, the commonhold community statement contains the terms specified by you and does not include any restrictions on occupation or use specified by you as unacceptable, and we have or will obtain on or before completion a commonhold unit information certificate;
- (v) we have received satisfactory evidence that the buildings insurance is in place, or will be on completion, for the sum and in the terms required by you;
- (vi) if the Property is to be purchased by the Borrower:
  - (a) the contract for sale provides for vacant possession on completion;
  - (b) the seller has owned or been the registered owner of the Property for not less than six months;
  - (c) we are not acting on behalf of the seller;
- (vii) we are in possession of: (A) either a local search or local search insurance and (B) such other searches or search insurance as are appropriate to the Property, the mortgagor and any guarantor, in each case in accordance with your instructions;
- (viii) nothing has been revealed by our searches and enquiries which would prevent the Property being used by any occupant for residential purposes;
- (ix) neither any principal nor any other solicitor or registered European lawyer in the practice giving this certificate nor any spouse, child, parent, brother or sister of such a person is interested in the Property (whether alone or jointly with any other) as mortgagor.

**WE:**

- (a) undertake, prior to use of the mortgage advance, to obtain in the form required by you the execution of a mortgage and a guarantee as appropriate by the persons whose identities have been checked in accordance with paragraph (1) above as those of the Borrower, any other person in whom the legal estate is vested and any guarantor; and, if required by you:
  - to obtain their signatures to the forms of undertaking required by you in relation to the use, occupation or physical state of the Property;
  - to ask the Borrower for confirmation that the information about occupants given in your mortgage instructions or offer is correct; and
  - to obtain consents in the form required by you from any existing or prospective occupier(s) aged 17 or over of the Property specified by you or of whom we are aware;
- (b) have made or will make such Bankruptcy, Land Registry or Land Charges Searches as may be necessary to justify certificate no. (2)(i) above;
- (c) will within the period of protection afforded by the searches referred to in paragraph (b) above:
  - (i) complete the mortgage;
  - (ii) arrange for the issue of a stamp duty land tax certificate if appropriate;
  - (iii) deliver to the Land Registry the documents necessary to register the mortgage in your favour and any relevant prior dealings;

- (iv) effect any other registrations necessary to protect your interests as mortgagee;
- (d) will despatch to you such deeds and documents relating to the Property as you require with a list of them in the form prescribed by you within ten working days of receipt by us of the title information document from the Land Registry;
- (e) will not part with the mortgage advance (and will return it to you if required) if it shall come to our notice prior to completion that the Property will at completion be occupied in whole or in part otherwise than in accordance with your instructions;
- (f) will not accept instructions, except with your consent in writing, to prepare any lease or tenancy agreement relating to the Property or any part of it prior to despatch of the Charge Certificate to you;
- (g) will not use the mortgage advance until satisfied that, prior to or contemporaneously with the transfer of the Property to the mortgagor, there will be discharged (A) any existing mortgage on property the subject of an associated sale of which we are aware and (B) any other mortgages made by a lender identified by you secured against a property located in England or Wales where you have given either an account number or numbers or a property address;
- (h) will notify you in writing if any matter comes to our attention before completion which would render the certificate given above untrue or inaccurate and, in those circumstances, will defer completion pending your authority to proceed and will return the mortgage advance to you if required;
- (i) we confirm that we have complied, or will comply, with your instructions in all other respects to the extent that they do not extend beyond the limitations contained in paragraph (3)(c) of rule 6 of the Solicitors' Practice Rules 1990.

OUR duties to you are limited to the matters set out in this certificate and we accept no further liability or responsibility whatsoever. The payment by you to us (by whatever means) of the mortgage advance or any part of it constitutes acceptance of this limitation and any assignment to you by the Borrower of any rights of action against us to which the Borrower may be entitled shall take effect subject to this limitation.

**Signature box**

SIGNED on behalf of
<b>THE CONVEYANCERS</b> .....
NAME
of Authorised Signatory.....
QUALIFICATION
of Authorised Signatory.....
DATE of Signature .....

## Rule 6A (Seller's solicitor dealing with more than one prospective buyer)

(1) This rule applies to the conveyancing of freehold (including commonhold) and leasehold property. The rule is to be interpreted in the light of the notes.

### Notes

- (i) *Rule 6A applies to all conveyancing of land, whether the transaction is of a "commercial" or "domestic" nature.*
- (ii) *Rule 6A does not set terms for a contract race. It lays down requirements which must be met when a solicitor is instructed to deal with more than one prospective buyer. The rule imposes no obligation on the seller's solicitor to exchange contracts with the first buyer to deliver a signed contract and deposit. It will be a matter of law whether or not the seller has entered into a contractual obligation to exchange with the buyer "first past the post", or whether the whole matter remains "subject to contract".*

(2) Where a seller instructs a solicitor to deal with more than one prospective buyer, the solicitor (with the client's consent) shall immediately disclose the seller's decision, if possible by telephone or fax, to the solicitor or other conveyancer acting for each prospective buyer or direct to the prospective buyer if acting in person. Such disclosure, if made by telephone, shall at once be confirmed by letter or fax. If the seller refuses to authorise disclosure, the solicitor shall immediately cease to act. Each prospective buyer must be notified each time a decision is taken to deal with any further prospective buyer.

### Notes

- (i) *It is the seller's decision to deal with more than one prospective buyer which must be notified. The seller's solicitor must not wait until contracts are actually submitted but must notify the appropriate parties immediately upon receiving instructions to deal with a prospective buyer (other than the first).*
- (ii) *A solicitor will have been instructed to deal with a prospective buyer where the solicitor is asked to submit a draft contract or to provide any other documentation or information (e.g. a plan or a note of the Land Registry title number) in order to facilitate the conveyancing of the premises to the prospective buyer. The rule does not, however, cover activities normally performed by an estate agent, such as issuing particulars of sale, showing prospective buyers round the property, and negotiating the price.*
- (iii) *The rule will apply where the contracts are to contain non-identical terms (e.g. where one contract is to include additional land). It will also apply where the contracts are to relate to different interests in the same property where the sale of one such interest would affect the sale of the other. For example, a party negotiating to take a lease of premises will be affected by another party negotiating to buy the freehold with vacant possession, since the sale of one precludes the sale of the other. On the other hand, the rule would not apply where the seller is proposing to grant a lease and to effect a simultaneous sale of the freehold reversion subject to that lease, since neither transaction precludes the other.*
- (iv) *Where a prospective buyer has retained an unqualified conveyancer, solicitors are reminded to consult the Council guidance on dealing with unqualified conveyancers (Annex 25A in the 1999 edition of "The Guide to the Professional Conduct of Solicitors"). However, so far as Rule 6A is concerned, the obligations*

*in paragraph (2) will be met by disclosure either to the prospective buyer direct or to the unqualified conveyancer.*

(3) The obligations in paragraph (2) of this rule apply where a seller client, to the solicitor's knowledge, deals (whether directly or through another solicitor or other conveyancer) with another prospective buyer (or with that buyer's solicitor or other conveyancer).

#### **Note**

*"Deals with another prospective buyer" should be interpreted in the light of note (ii) to paragraph (2).*

(4) A solicitor shall not act for more than one of the prospective buyers.

#### **Notes**

- (i) *"Prospective buyers" should be interpreted in the light of note (ii) to paragraph (2)*
- (ii) *This part of the rule recognises the inevitable conflict of interest which makes it impossible for a solicitor to act for more than one of the prospective buyers.*

(5) A solicitor shall not act for both the seller and one of the prospective buyers, even in a case which would fall within Rule 6(2)(b) of these rules.

#### **Notes**

- (i) *"Prospective buyers" should be interpreted in the light of note (ii) to paragraph (2).*
- (ii) *Clearly a solicitor must not act for both where it is known at the time of taking instructions on behalf of the buyer that there is more than one prospective buyer. In addition, this part of the rule does not permit a solicitor to continue to act for both in a case falling within Rule 6(2), where another prospective buyer is introduced during the course of the transaction because of the significant inherent conflict; the solicitor would find it impossible to reconcile the interests of both clients if, for example, it was in the seller's best interests to exchange with the other prospective buyer.*

(6) For the purposes of this rule a prospective buyer shall continue to be treated as such until either the prospective buyer or the seller gives written notice (either by letter or by fax) of withdrawal from the transaction, such notice to be between solicitors or other conveyancers save where such notice is given by or to a prospective buyer acting in person.

#### **Notes**

- (i) *Solicitors should take particular care where a contract has been submitted but nothing has been heard from the prospective buyer's solicitor for some time. If the seller decides to deal with another buyer, the rule must still be complied with unless the seller's solicitor has already given notice of withdrawal.*
- (ii) *Where a prospective buyer has retained an unqualified conveyancer, the provisions of paragraph (6) should be interpreted in the light of note (iv) to paragraph (2).*

(7) This rule does not apply to a proposed sale by auction or tender. The rule does, however, apply to require disclosure to a prospective buyer by private treaty of instructions to offer the property by auction or tender.

## **Rule 7 (Fee sharing, partnership and corporate practice)**

### **(1) (Fee sharing – the general rule)**

A solicitor shall not share or agree to share his or her professional fees with any person except:

- (a) a practising solicitor;
- (b) a practising lawyer of another jurisdiction (other than a lawyer who has been struck off the register of foreign lawyers or the register of European lawyers, or whose registration has been suspended);
- (ba) a non-registered European lawyer partner in a partnership permitted by paragraph (6)(c) of this rule;
- (bb) a body corporate wholly owned and controlled, for the purpose of practising law, by lawyers within sub-paragraph (b) above, but without the involvement of registered European lawyers or registered foreign lawyers practising as such as directors, members or owners of shares;
- (bc) a body corporate permitted under Rule 9(1)(a) of the Solicitors' Overseas Practice Rules;
- (c) the solicitor's *bona fide* employee, which provision shall not permit under the cloak of employment a partnership prohibited by paragraph (6) of this rule; or
- (d) a retired partner or predecessor of the solicitor or the dependants or personal representatives of a deceased partner or predecessor; or
- (e) a charity (as defined in Rule 18(2)(aa) of these rules), provided
  - (i) there is compliance with Rule 1(a) and (c) relating to independence and integrity and best interests of clients; and
  - (ii) if requested by the Law Society to do so, the solicitor supplies details of all agreements to share fees with a charity; and
  - (iii) the operation of any agreement does not result in a partnership prohibited by paragraph (6) of this rule; and
  - (iv) the fee sharing agreement does not involve a breach of the Solicitors' Introduction and Referral Code.

### **(1A) (Fee sharing – exception for introducing capital or providing services)**

Notwithstanding paragraph (1) of this rule a solicitor may share his or her professional fees with a third party ("the fee sharer") provided that:

- (a) the purpose of the fee sharing arrangement is solely to facilitate the introduction of capital and/or the provision of services to a practice;
- (b) neither the fee sharing agreement between the solicitor and a fee sharer, nor the extent of the fees the solicitor shares with fee sharers, permits

any fee sharer to influence or constrain the solicitor's professional judgement in relation to the advice given to any client;

- (c) the operation of the agreement does not result in a partnership prohibited by paragraph (6) of this rule;
- (d) if requested by the Law Society to do so, the solicitor supplies details of all agreements between the solicitor and fee sharers and the percentage of the annual gross fees of the practice which has been paid to each fee sharer; and
- (e) the fee sharing agreement does not involve a breach of the Solicitors' Introduction and Referral Code.

"Fee sharer" means a person who or which shares a solicitor's fees in reliance on the exception contained in this paragraph, and the expression includes any person connected to or associated with the fee sharer.

### **Note**

*Because of article 3.6 of the CCBE Code, the exemptions in paragraphs (1)(e) and (1A) of this rule do not apply to a solicitor's "European cross-border activities" (see Rule 16). Article 3.6 prohibits solicitors from sharing fees with a non-lawyer fee sharer situated in a CCBE state other than the UK.*

### **(2) (Fee sharing – exception for solicitor property seller's sub-agent)**

Notwithstanding paragraph (1) of this rule a solicitor who instructs an estate agent as sub-agent for the sale of properties may remunerate the estate agent on the basis of a proportion of the solicitor's professional fee.

### **(3) (Fee sharing – exception for employed solicitors)**

The exceptions set out in paragraphs 1A and 2 to 9 of the Employed Solicitors Code shall where necessary also operate as exceptions to this rule but only to permit fee sharing with

- (a) the solicitor's employer (as defined in Rule 4(1) of these rules); or
- (b) a charity, where the work is undertaken in accordance with paragraph 1A of the Employed Solicitors Code.

### **(4) (Fee sharing – exception for voluntary work)**

A solicitor who works as a volunteer in a law centre or advice service operated by a charitable or similar non-commercial organisation may pay to the organisation any fees or costs that he or she receives

- (a) under the legal aid scheme; or
- (b) where the organisation indemnifies the client in relation to the solicitor's costs insofar as they are not recoverable from any other source.

### **(5) (Fee sharing – exception for retired or deceased director, shareowner or member)**

For the purposes of sub-paragraph (1)(d) above, the references to a retired or deceased partner shall be construed,

- (a) in relation to a recognised body which is a company with a share capital, as meaning a retired or deceased director of or shareowner in that body,
- (b) in relation to a recognised body which is a company without a share capital, as meaning a retired or deceased director or member of the body, and
- (c) in relation to a recognised body which is a limited liability partnership, as meaning
  - (i) a retired or deceased member of the body, or
  - (ii) a retired or deceased director of or shareowner in a company which is or was a member of the body, or
  - (iii) a retired or deceased member of a limited liability partnership which is or was a member of the body.

### **(6) (Partnership)**

Solicitors of the Supreme Court, registered European lawyers and recognised bodies are permitted to practise in the following types of partnership only:

- (a) a partnership consisting of solicitors of the Supreme Court and/or registered European lawyers and/or recognised bodies;
- (b) a partnership consisting of solicitors of the Supreme Court and/or registered European lawyers, together with registered foreign lawyers;
- (c) a partnership consisting of registered European lawyers and non-registered European lawyers, with or without solicitors of the Supreme Court and/or registered foreign lawyers; and
- (ca) a partnership consisting of registered European lawyers, non-registered European lawyers and recognised bodies, with or without solicitors of the Supreme Court.
- (d) In paragraph (6)(c) and (ca) above:
 

“non-registered European lawyer” means a member of a legal profession which is covered by the Establishment of Lawyers Directive 98/5/EC, but who is not:

  - (A) a solicitor of the Supreme Court, registered European lawyer or registered foreign lawyer,
  - (B) a barrister of England and Wales, Northern Ireland or the Irish Republic, or
  - (C) a Scottish advocate; and

who is not based at an office in England and Wales.

### **(7) (Corporate practice)**

A solicitor of the Supreme Court or registered European lawyer shall not practise through any body corporate except a recognised body, or save as permitted under Rule 4 of these rules.

## Rule 8 (Contingency fees)

[See also guidance [Disclosure of funding, fee sharing and referral arrangements](#) issued in March 2004 and [Referral fees – Guidance](#) issued on 21 December 2004.]

(1) A solicitor who is retained or employed to prosecute or defend any action, suit or other contentious proceeding shall not enter into any arrangement to receive a contingency fee in respect of that proceeding, save one permitted under statute or by the common law.

(2) Paragraph (1) of this rule shall not apply to an arrangement in respect of an action, suit or other contentious proceeding in any country other than England and Wales to the extent that the local lawyer would be permitted to receive a contingency fee in respect of that proceeding.

## Rule 9 (Claims assessors)

(1) A solicitor shall not, in respect of any claim or claims arising as a result of death or personal injury, either enter into an arrangement for the introduction of clients with or act in association with any person (not being a solicitor) whose business or any part of whose business is to make, support or prosecute (whether by action or otherwise, and whether by a solicitor or agent or otherwise) claims arising as a result of death or personal injury and who in the course of such business solicits or receives contingency fees in respect of such claims.

(2) The prohibition in paragraph (1) of this rule shall not apply to an arrangement or association with a person who solicits or receives contingency fees only in respect of proceedings in a country outside England and Wales, to the extent that a local lawyer would be permitted to receive a contingency fee in respect of such proceedings.

## Rule 10 (Receipt of commissions from third parties)

(1) Solicitors shall account to their clients for any commission received of more than £20 unless, having disclosed to the client in writing the amount or basis of calculation of the commission or (if the precise amount or basis cannot be ascertained) an approximation thereof, they have the client's agreement to retain it.

(2) Where the commission actually received is materially in excess of the amount or basis or approximation disclosed to the client the solicitor shall account to the client for the excess.

(3) This rule does not apply where a member of the public deposits money with a solicitor who is acting as agent for a building society or other financial institution and the solicitor has not advised that person as a client as to the disposition of the money.

## Rule 11

[repealed]

## Rule 12 (Investment business)

(1) Without prejudice to the generality of the principles embodied in Rule 1 of these rules, solicitors shall not in connection with investment business:

- (a) be appointed representatives; or
- (b) have any arrangement with other persons under which the solicitors could be constrained to recommend to clients or effect for them (or refrain from doing so) transactions in some investments but not others, with some persons but not others, or through the agency of some persons but not others; or to introduce or refer clients or other persons with whom the solicitors deal to some persons but not others.

(2) Solicitors shall not alone, or by or with others, control, actively participate in or operate any separate business which is an appointed representative, unless it is the appointed representative of an independent financial adviser.

(3) [deleted]

(4) This rule shall have effect in relation to the conduct of investment business in, into or from the United Kingdom by:

- (a) a solicitor of the Supreme Court or recognised body practising from an office anywhere in the world;
- (b) a registered European lawyer practising from an office anywhere in the United Kingdom; or
- (c) a registered foreign lawyer practising from an office in England and Wales.

(5) In this rule "investment business" means any "regulated activity" as defined in the Financial Services and Markets Act 2000; and "appointed representative" and "investment" have the meanings given in that Act.

(6) Paragraph (1)(b) of this rule shall not apply to arrangements in connection with any of the following types of investments:

- (a) regulated mortgage contracts;
- (b) general insurance contracts; or
- (c) pure protection contracts;

and the terms in (a), (b) and (c) above have the meanings given in rule 8(1) of the Solicitors' Financial Services (Scope) Rules 2001.

## Rule 13 (Supervision and management of a practice)

[See also [Former version of rule 13, Solicitors' Practice Rules 1990.](#)]

In this rule, words in italics are defined in the notes.

(1) The *principals* in a practice must ensure that their practice is supervised and managed so as to provide for:

- (a) compliance with *principal* solicitors' duties at law and in conduct to exercise proper *supervision* over their admitted and unadmitted staff;
  - (b) adequate *supervision* and direction of clients' matters;
  - (c) compliance with the requirements of sections 22(2A) and 23(3) of the Solicitors Act 1974, section 9(4) of the Administration of Justice Act 1985 and section 84(2)(e) of the Immigration and Asylum Act 1999 as to the direction and *supervision* of unqualified persons;
  - (d) effective *management* of the practice generally.
- (2) Every practice must have at least one *principal* who is a solicitor *qualified to supervise*.
- (3) (a) Except as provided in (b) below, every office of the practice must have at least one solicitor *qualified to supervise*, for whom that office is his or her *normal place of work*.
- (b) Without prejudice to the requirements of paragraph (1) of this rule, an office which undertakes only property selling and ancillary mortgage related services as defined in rule 6 of these rules, survey and valuation services, must be managed and supervised to the following minimum standards:
- (i) the day-to-day control and administration must be undertaken by a suitably qualified and experienced office manager who is a fit and proper person to undertake such work; and for whom that office is his or her normal place of work; and
  - (ii) the office must be supervised and managed by a solicitor *qualified to supervise*, who must visit the office with sufficient frequency and spend sufficient time there to allow for adequate control of and consultation with staff, and if necessary consultation with clients.
- (4) This rule is to be interpreted in the light of the notes, and is subject to the transitional provisions set out in note (k).
- (5) (a) This rule applies to private practice, and to solicitors employed by a law centre.
- (b) The rule also applies to other employed solicitors, but only:
- (i) if they advise or act for members of the public under the legal aid scheme; or
  - (ii) if, in acting for members of the public, they exercise any *right of audience* or *right to conduct litigation*, or supervise anyone exercising those rights.

## Notes

### **(a) Principals' responsibility for the practice**

*Principals are responsible at law and in conduct for their practices, and compliance with the rule does not derogate from this responsibility. Under rule 6 of these rules, property selling or mortgage related services to one party to a conveyance, and conveyancing services for the other party, may not be supervised by the same solicitor.*

### **(b) "Supervision" and "management"**

(i) *"Supervision" refers to the professional overseeing of staff and the professional overseeing of clients' matters.*

- (ii) "Management" is a wider concept, which encompasses the overall direction and development of the practice and its day-to-day control and administration. Management functions include business efficiency as well as professional competence.
- (iii) Operationally, supervision and management may be delegated within an established framework for reporting and accountability. However, the responsibility under paragraph (1)(a) of the rule, and the responsibility referred to in note (a) above, remain with the principals.
- (iv) "With sufficient frequency" in paragraph (3)(b)(ii) would normally mean daily; but if the office is open at weekends it may be possible to defer consultations with clients until a weekday and be available only at need to staff.

**(c) Evidence of effective supervision and management**

Where a question arises as to compliance with paragraph (1) of the rule, principals will be expected to be able to produce evidence of a systematic and effective approach to the supervision and management of the practice. Such evidence may include the implementation by the practice of one or more of the following:

- (i) guidance on the supervision and execution of particular types of work issued from time to time by the Law Society including guidance on solicitors' responsibilities for the supervision of clerks exercising rights of audience under section 27(2)(e) of the Courts and Legal Services Act 1990;
- (ii) the practice's own properly documented management standards and procedures;
- (iii) practice management standards promoted from time to time by the Law Society;
- (iv) accounting standards and procedures promoted from time to time by the Law Society;
- (v) external quality standards such as BS EN ISO 9000 or Investors in People; and
- (vi) in the case of solicitors employed by a law centre, any management standards or procedures laid down by its management committee.

**(d) "Qualified to supervise"**

A solicitor is qualified to supervise if he or she:

- (i) has held practising certificates for at least 36 months within the last ten years; and
- (ii) has completed the training specified from time to time by the Law Society for the purpose of the rule.

**(e) "Normal place of work"**

- (i) A solicitor's "normal place of work" is the office from which he or she normally works, even though the day-to-day demands of practice may often take the solicitor out of the office.
- (ii) If a solicitor normally works from a particular office for a part of the working week, that office is his or her "normal place of work" for that part of the week. The solicitor may have a different "normal place of work" for another part of the week.
- (iii) A solicitor who has a different "normal place of work" for different parts of the week could be the sole solicitor qualified to supervise at different offices at different times in the week. However, no solicitor can be the sole solicitor qualified to supervise at two different offices for the same part of the week.
- (iv) For compliance with paragraph (3) of the rule, an office must, for every part of the working week, have a solicitor qualified to supervise for whom that office is his or her "normal place of work" for that part of the week. This could be a different solicitor for different parts of the week.
- (v) The working week of an office includes early mornings, late evenings and weekends if work is carried on, and if so the office must have a solicitor qualified to supervise for those times. However, it is not required that the solicitor qualified to supervise normally works at those times, provided that he or she:

- (A) is available for emergency consultation, and
- (B) pays occasional visits to the office during such times.

**(f) Working away from the office**

*It is particularly important that systems of supervision and management encompass the work of:*

- (i) *those persons from time to time working away from the office – e.g. at home, visiting clients, at court, at a police station, at a consulting room open only for a few hours per week, or staffing a stand at an exhibition;*
- (ii) *any person who normally works away from the office, such as a teleworker or homeworker.*

**(g) Absence of solicitor qualified to supervise, or office manager**

- (i) *When the solicitor qualified to supervise at an office is away on holiday, on sick leave, etc., suitable arrangements must be in place to ensure that any duties to clients and others are fully met. A similar standard applies to the absence of an office manager with responsibility for the day-to-day control and administration of a property selling office.*
- (ii) *If the solicitor qualified to supervise will be away for a month or more, the arrangements will normally need to include the provision of another solicitor qualified to supervise at that office. A similar standard applies to the absence of an office manager with responsibility for the day-to-day control and administration of a property selling office.*

**(h) "Right of audience" and "right to conduct litigation"**

*"Right of audience" and "right to conduct litigation" are to be interpreted in accordance with Part II and section 119 of the Courts and Legal Services Act 1990 – see Rule 18(2)(fe).*

**(i) "Principals"**

- (i) *"Principal", in Rule 13(1) and notes (a)–(c), means:*
  - (A) *a sole practitioner;*
  - (B) *if the practice is a partnership, an individual or recognised body who or which is a partner in the practice;*
  - (C) *if the practice is a recognised body which is a company, the company and its directors;*
  - (D) *if the practice is a recognised body which is a limited liability partnership, the limited liability partnership and its members.*
- (ii) *"Principal", in Rule 13(2) and note (j), means an individual who is:*
  - (A) *a sole practitioner;*
  - (B) *if the practice is a partnership, a partner in the practice;*
  - (C) *if the practice is a recognised body which is a company, a director of the company;*
  - (D) *if the practice is a recognised body which is a limited liability partnership:*
    - (I) *a member of the body; or*
    - (II) *a director of a company (a recognised body) which is a member of the body; or*
    - (III) *a member of a limited liability partnership (a recognised body) which is a member of the body.*

**(ia) Registered European lawyers**

- (i) *A registered European lawyer may fulfil the role of a "solicitor qualified to supervise" for the purpose of paragraph (2) or (3) of the rule or note (k)(ii)(C) below, provided that he or she has:*

- (A) practised as a lawyer for at least 36 months within the last ten years; and
  - (B) completed any training specified from time to time by the Law Society under note (d)(ii) above.
- (ii) A solicitor of the Supreme Court who was formerly a registered European lawyer will be a "solicitor qualified to supervise" if he or she has:
- (A) practised as a lawyer for at least 36 months within the last ten years; and
  - (B) completed the training specified from time to time by the Law Society under note (d)(ii) above.

**(j) Registered foreign lawyers**

- (i) A registered foreign lawyer who is a principal in the practice may fulfil the role of a "solicitor qualified to supervise" for the purpose of paragraph (2) of the rule, provided that:
- (A) the practice has at least one principal who is a solicitor of the Supreme Court or registered European lawyer; and
  - (B) the practice does not exercise or assume responsibility for any right of audience or any right to conduct litigation; and
  - (C) the registered foreign lawyer has practised as a lawyer for at least 36 months within the last ten years; and
  - (D) he or she has completed the training specified under note (d)(ii) above.
- (ii) A registered foreign lawyer who is a principal in the practice may fulfil the role of a "solicitor qualified to supervise" for the purpose of paragraph (3) of the rule or note (k)(ii)(C) below, provided that:
- (A) no right of audience or right to conduct litigation is exercised or supervised from that office; and
  - (B) the practice has at least one principal who is a solicitor of the Supreme Court or registered European lawyer; and
  - (C) the registered foreign lawyer has practised as a lawyer for at least 36 months within the last ten years; and
  - (D) he or she has completed the training specified under note (d)(ii) above.

**(ja) Conveyancing and probate**

A registered foreign lawyer, or a registered European lawyer (unless qualified to do conveyancing or probate work under regulation 12 or 13 of the European Communities (Lawyer's Practice) Regulations 2000), may not supervise conveyancing or probate work for the purposes of section 22(2A) or 23(3) of the Solicitors Act 1974 or section 9(4) of the Administration of Justice Act 1985, but may, subject to the requirements of the rule, fulfil the role of a "solicitor qualified to supervise" in a practice or at an office where such work is done.

**(k) Transitional provisions**

For a period of 10 years from 23rd December 1999:

- (i) a solicitor of the Supreme Court, registered European lawyer or registered foreign lawyer who would not satisfy the requirements for a solicitor qualified to supervise can nevertheless fulfil that role for the purpose of paragraph (2) of the rule or note (k)(ii)(C) below, provided that:
- (A) immediately before 12th December 1996 he or she was qualified to supervise an office under Practice Rule 13(1)(a) as it then stood, or any waiver of that rule; and
  - (B) any requirements of that rule or of any waiver continue to be met;
- (ii) a person who would not satisfy the requirements for a solicitor qualified to supervise can nevertheless fulfil that role for the purpose of paragraph (3) of the rule, provided that:

- (A) *immediately before 12th December 1996 he or she was managing or employed to manage an office in compliance with Practice Rule 13(1)(b) as it then stood, or any waiver of that rule; and*
- (B) *any requirements of that rule or of any waiver continue to be met; and*
- (C) *the office is attended on a daily basis by a solicitor qualified to supervise.*

## **Rule 14 (Structural surveys and formal valuations)**

Solicitors may not provide structural surveys or formal valuations of property unless the work is carried out by a principal, director, member (in the case of a limited liability partnership) or employee who is a chartered surveyor or who holds another professional qualification approved by the Council.

## **Rule 15 (Costs information and client care)**

Solicitors shall:

- (a) give information about costs and other matters, and
- (b) operate a complaints handling procedure,

in accordance with a Solicitors' Costs Information and Client Care Code made from time to time by the Council of the Law Society with the concurrence of the Master of the Rolls, but subject to the notes.

### **Notes**

- (i) *A serious breach of the code, or persistent breaches of a material nature, will be a breach of the rule, and may also be evidence of inadequate professional services under section 37A of the Solicitors Act 1974.*
- (ii) *Material breaches of the code which are not serious or persistent will not be a breach of the rule, but may be evidence of inadequate professional services under section 37A.*
- (iii) *The powers of the Law Society on a finding of inadequate professional services include:*
  - (a) *disallowing all or part of the solicitor's costs; and*
  - (b) *directing the solicitor to pay compensation to the client up to a limit of £15,000.*
- (iv) *Non-material breaches of the code will not be a breach of the rule, and will not be evidence of inadequate professional services under section 37A.*
- (v) *Registered foreign lawyers practising in partnership with solicitors of the Supreme Court or registered European lawyers, or as members of recognised bodies which are limited liability partnerships, or as directors of recognised bodies which are companies, although subject to Rule 15 as a matter of professional conduct, are not subject to section 37A. However, such solicitors, registered European lawyers and recognised bodies are subject to section 37A for professional services provided by the firm.*

## Rule 16 (European cross-border activities)

[See also the [CCBE Code of Conduct \(relevant extracts\)](#).]

(1) In relation to European cross-border activities solicitors shall, without prejudice to their other obligations under these rules or any other rules, principles or requirements of conduct, observe the rules codified in articles 2 to 5 of the CCBE's Code of Conduct for European Lawyers adopted on 19th May 2006, to be interpreted in the light of:

- (a) article 1 of the Code;
- (b) the CCBE's explanatory memorandum dated 19th May 2006; and
- (c) the notes to this rule.

(2) In this rule:

- (a) "European cross-border activities" means:
  - (i) all professional contacts with lawyers of CCBE states other than the United Kingdom; and
  - (ii) the professional activities of the solicitor in a CCBE state other than the United Kingdom, whether or not the solicitor is physically present in that CCBE state;
- (b) "lawyers" means members of legal professions represented on the CCBE either as full members or as observer members; and
- (c) "CCBE state" means a state whose legal profession is represented on the CCBE, either as a full member or as an observer member.

### Notes

- (i) *The CCBE is the Council of Bars and Law Societies of Europe.*
- (ii) *[deleted]*
- (iii) *The view of the Council of the Law Society is that solicitors will fulfil their obligations under articles 2 to 5 of the Code by observing the corresponding rules, principles and requirements of conduct otherwise applicable to solicitors and, in addition, the following articles of the Code which have no such corresponding provision or which impose additional restrictions:*
  - *article 2.5 (incompatible occupations);*
  - *article 3.6 (fee sharing with non-lawyers);*
  - *article 5.2 (co-operation among lawyers of different member states);*
  - *article 5.3 (correspondence between lawyers);*
  - *article 5.4 (referral fees); and*
  - *article 5.9 (disputes amongst lawyers in different member states).*

*This view is subject to any authoritative ruling to the contrary at European level.*
- (iv) *A list of the legal professions covered by the Code appears in the CCBE's explanatory memorandum under article 1.4.*
- (v) *For the purpose of Rule 16 professional contacts and professional activities taking place within a practice are not to be regarded as "European cross-border activities".*

## **Rule 16A (Solicitors acting as advocates)**

Any solicitor of the Supreme Court or registered European lawyer acting as advocate shall at all times comply with the Law Society's Code for Advocacy.

## **Rule 16B (Choice of advocate)**

(1) A solicitor shall not make it a condition of providing litigation services that advocacy services shall also be provided by that solicitor or by the solicitor's firm or the solicitor's agent.

(2) A solicitor who provides both litigation and advocacy services shall as soon as practicable after receiving instructions and from time to time consider and advise the client whether having regard to the circumstances including:

- (i) the gravity, complexity and likely cost of the case;
- (ii) the nature of the solicitor's practice;
- (iii) the solicitor's ability and experience;
- (iv) the solicitor's relationship with the client;

the best interests of the client would be served by the solicitor, another advocate from the solicitor's firm, or some other advocate providing the advocacy services.

## **Rule 16C (Powers of the Law Society)**

(1) Any solicitor must at the time and place fixed by the Law Society produce any documents held by the solicitor or held under the solicitor's control:

- (a) in connection with the solicitor's practice; or
- (b) in connection with any trust of which the solicitor is or formerly was a trustee,

for inspection by a person appointed by the Society for the purpose of ascertaining whether the solicitor is complying with rules, codes or guidance made or issued by the Council of the Law Society.

(2) A requirement for production under paragraph (1) above must be in writing, and left at or sent by registered post or recorded delivery to the most recent address held by the Society's Registration Department, or delivered by the Society's appointee. If sent through the post, receipt will be deemed 48 hours (excluding Saturdays, Sundays and Bank Holidays) after posting.

(3) Documents held electronically must be produced in the form required by the Society's appointee.

(4) The Society's appointee is entitled to seek verification from clients, staff and the banks, building societies or other financial institutions used by the solicitor. The solicitor must, if necessary, provide written permission for the information to be given.

(5) The Society's appointee is not entitled to take original documents away but must be provided with photocopies on request.

(6) The Society may use any information obtained under this rule in proceedings before the Solicitors' Disciplinary Tribunal and, if the information indicates that the solicitor or an employee of the solicitor may have committed a serious criminal offence, may disclose the information for use in investigating the possible commission of a criminal offence and in any subsequent prosecution. In the case of a registered European lawyer or registered foreign lawyer, the information may also be sent to the competent authority in that lawyer's home state or states. In the case of a solicitor of the Supreme Court who is established in another state under the Establishment of Lawyers Directive 98/5/EC, the report may also be sent to the competent authority in the host state.

(7) In paragraph (6) of this Rule, "an employee of the solicitor" includes a director of a recognised body which is a company, or a member of a recognised body which is a limited liability partnership.

## **Rule 16D (Conflict of interests)**

[See also [guidance on Conflicts of interest and the duties of confidentiality and disclosure.](#)]

### **(1) (Introduction)**

- (a) This rule sets out provisions for dealing with conflicts of interest other than those conflicts in relation to conveyancing, property selling or mortgage related services which are dealt with in rule 6.
- (b) This rule applies to a regulated individual and a regulated practice.
- (c) Conflicts between the duty of confidence and duty of disclosure owed by an individual or a practice to two or more clients are dealt with in rule 16E.

### **(2) (Duty not to act)**

- (a) You must not act if there is a conflict of interests (except in the limited circumstances dealt with in paragraph (3)).
- (b) There is a conflict of interests if:
  - (i) you owe, or your practice owes, separate duties to act in the best interests of two or more clients in relation to the same or related matters, and those duties conflict, or there is a significant risk that those duties may conflict; or
  - (ii) your duty to act in the best interests of any client in relation to a matter conflicts, or there is a significant risk that it may conflict, with your own interests in relation to that or a related matter.
- (c) For the purpose of paragraph (2)(b) above, a related matter will always include any other matter which involves the same asset or liability.

### **(3) (Exceptions to duty not to act)**

- (a) You or your practice may act for two or more clients in relation to a matter in situations of conflict or possible conflict if:
  - (i) the different clients have a substantially common interest in relation to that matter or a particular aspect of it; and

- (ii) all the clients have given in writing their informed consent to you or your practice acting.
- (b) Your practice may act for two or more clients in relation to a matter in situations of conflict or possible conflict if:
  - (i) the clients are competing for the same asset which, if attained by one client, will make that asset unattainable to the other client(s);
  - (ii) there is no other conflict, or significant risk of conflict, between the interests of any of the clients in relation to that matter;
  - (iii) the clients have confirmed in writing that they want your practice to act in the knowledge that your practice acts or may act for one or more other clients who are competing for the same asset; and
  - (iv) unless the clients specifically agree, no individual solicitor acts for, or is responsible for the supervision of, more than one of those clients.
- (c) When acting in accordance with paragraphs (3)(a) or (b) above it must be reasonable in all the circumstances for you or your practice to act for all those clients.
- (d) If you are relying on the exceptions in paragraphs (3)(a) or (b) above, you must:
  - (i) draw all the relevant issues to the attention of the clients before agreeing to act or, where already acting, when the conflict arises or as soon as is reasonably practicable, and in such a way that the clients concerned can understand the issues and the risks involved; and
  - (ii) have a reasonable belief that the clients understand the relevant issues; and
  - (iii) be reasonably satisfied that those clients are of full capacity.

#### **(4) (Conflict when already acting)**

If you act, or your practice acts for more than one client in a matter and, during the course of the conduct of that matter, a conflict arises between the interests of two or more of those clients, you, or your practice, may only continue to act for one of the clients (or a group of clients between whom there is no conflict) provided that the duty of confidentiality to the other client(s) is not put at risk.

#### **(5) (Accepting gifts from clients)**

Where a client proposes to make a lifetime gift or a gift on death to, or for the benefit of:

- (a) you;
- (b) any proprietor or employee of the practice; or
- (c) a family member of any of the above

and the gift is of a significant amount, in itself or having regard to the size of the client's estate and the reasonable expectations of the prospective beneficiaries, you must advise the client to take independent advice about the gift unless the client is a member of the beneficiary's family. If the client refuses, you must stop acting for the client in relation to the gift.

## **(6) (Public office or appointment leading to conflict)**

You must decline to act where you, or another proprietor or employee in your practice, or a member of your family holds some public office or appointment as a result of which:

- (a) a conflict of interests, or a significant risk of a conflict, arises; or
- (b) the public might reasonably conclude that you, or your firm, had been able to make use of the office or appointment for the advantage of the client; or
- (c) your ability to advise the client properly and impartially is inhibited.

## **(7) (Waivers)**

Notwithstanding Rule 17 of these rules, the Council of the Law Society shall not have power to waive any of the provisions of this rule.

# **Rule 16E (Confidentiality and disclosure)**

[See also [guidance on Conflicts of interest and the duties of confidentiality and disclosure.](#)]

## **(1) (Introduction)**

- (a) This rule sets out provisions for dealing with the protection of clients' confidential information and the duty of disclosure owed to clients.
- (b) This rule applies to a regulated individual and a regulated practice.

## **(2) (Duty of confidentiality)**

You and your practice must keep the affairs of clients and former clients confidential except where disclosure is required or permitted by law or by your client or former client.

## **(3) (Duty of disclosure)**

You must disclose to a client all information of which you are aware which is material to that client's matter regardless of the source of the information unless:

- (i) there is a duty of confidentiality as referred to in paragraph (2) above, which always overrides the duty to disclose; or
- (ii) the following circumstances exist, as a consequence of which the duty does not apply:
  - (A) such disclosure is prohibited by law;
  - (B) it is agreed expressly that no duty to disclose arises or a different standard of disclosure applies; or
  - (C) you reasonably believe that serious physical or mental injury will be caused to any person if the information is disclosed to a client.

#### **(4) (Duty not to put confidentiality at risk by acting)**

If you hold, or if your practice holds, confidential information in relation to a client or former client, you must not risk breaching confidentiality by acting, or continuing to act, for another client on a matter where:

- (i) that information might reasonably be expected to be material; and
- (ii) that client has an interest adverse to the first-mentioned client or former client

except where proper arrangements can be made to protect that information in accordance with paragraph (5) below.

#### **(5) (Exception to duty not to put confidentiality at risk by acting – where clients consent)**

- (a) You may act, or continue to act, in the circumstances otherwise prohibited by paragraph (4) above with the informed consent of both clients but only if:
  - (i) the client for whom you act or are proposing to act knows that your practice, or a member of your practice, holds, or might hold, material information (in circumstances described in paragraph (4) above) in relation to their matter which you cannot disclose; and
  - (ii) you have a reasonable belief that both clients understand the relevant issues after these have been brought to their attention; and
  - (iii) both clients have agreed to the conditions under which you will be acting or continuing to act; and
  - (iv) it is reasonable in all the circumstances to do so.
- (b) "Both clients" in the context of paragraph (5) means:
  - (i) an existing or former client for whom your practice, or a member of your practice, holds confidential information; and
  - (ii) an existing or new client for whom you act or are proposing to act and to whom information held on behalf of the other client is material (in circumstances described in paragraph (4) above).
- (c) If you, or you and your practice, have been acting for two or more clients in reliance on rule 16D(3) (the conflict rule) and can no longer fulfil its requirements you may continue to act for one client with the consent of the other client provided you comply with paragraph (5).

#### **(6) (Exception to duty not to put confidentiality at risk by acting – where no clients consent)**

You may continue to act for a client on an existing matter, or on a matter related to an existing matter, in the circumstances otherwise prohibited by paragraph (4) above without the consent of the client for whom your practice, or a member of your practice, holds, or might hold, confidential information which is material to your client (in circumstances described in paragraph (4) above) but only if:

- (a) it is not possible to obtain informed consent under paragraph (5) above from the client for whom your practice, or a member of your practice, holds, or might hold, material confidential information; and

- (b) your client has agreed to your acting in the knowledge that your practice, or a member of your practice, holds, or might hold, information material to their matter which you cannot disclose; and
- (c) safeguards which comply with the standards required by law at the time they are implemented are put in place; and
- (d) it is reasonable in all the circumstances to do so.

### **(7) (Waivers)**

Notwithstanding Rule 17 of these rules, the Council of the Law Society shall not have power to waive any of the provisions of this rule.

## **Rule 17 (Waivers)**

In any particular case or cases the Council of the Law Society shall have power to waive in writing any of the provisions of these rules for a particular purpose or purposes expressed in such waiver, and to revoke such waiver.

## **Rule 18 (Application and interpretation)**

### **(1) (Application to foreign lawyers)**

- (a) For the avoidance of doubt, neither registration in the register of foreign lawyers, nor anything in these rules or in any other rules made under Part II of the Solicitors Act 1974 or section 9 of the Administration of Justice Act 1985, shall entitle any registered foreign lawyer:
  - (i) to exercise any right of audience or right to conduct litigation, or supervise or assume responsibility for the exercise of any such right, unless:
    - (A) the right is not reserved by law to any category of persons but is open to any individual; or
    - (B) the right is an immigration service which could have been provided by an individual who is neither a lawyer nor a legal executive but is registered with the Office of the Immigration Services Commissioner, and the registered foreign lawyer is practising as a regulated individual; or
  - (ii) to draw or prepare any instrument or papers, or make any application or lodge any document, whether relating to contentious proceedings, the conveyancing of land, the transfer of other property or the administration of estates, which is reserved to qualified persons by the Solicitors Act 1974, or to supervise or assume responsibility for any such work; unless he or she does the work
    - (A) as a director of a recognised body which is a company, at the direction and under the supervision of a director or employee of the body or

- (B) as a member of a recognised body which is a limited liability partnership, at the direction and under the supervision of a member or employee of the body

in accordance with section 9(4) of the Administration of Justice Act 1985 and without breach of Rule 4(2) of these rules; or

- (iii) to hold him- or herself out as a registered foreign lawyer, or as regulated by or registered with the Law Society, in connection with a sole practice as a foreign lawyer, or any other practice or business where he or she is not practising as a regulated individual.
- (b) For the avoidance of doubt, neither registration in the register of European lawyers, nor anything in these rules or in any other rules made under Part II of the Solicitors Act 1974 or section 9 of the Administration of Justice Act 1985, shall entitle any registered European lawyer:
- (i) to exercise any right of audience, unless:
    - (A) the right of audience is one which a solicitor of the Supreme Court could exercise without a higher courts qualification, and the registered European lawyer is instructed with, and appears in conjunction with, a solicitor of the Supreme Court or a barrister in accordance with regulation 11 of the European Communities (Lawyer's Practice) Regulations 2000; or
    - (B) the right of audience is one which a solicitor of the Supreme Court could not exercise without a higher courts qualification, and the registered European lawyer has a relevant higher courts qualification, and he or she is instructed with, and appears in conjunction with, a solicitor of the Supreme Court who has a relevant higher courts qualification or a barrister in accordance with regulation 11 of the European Communities (Lawyer's Practice) Regulations 2000; or
    - (C) the registered European lawyer is exercising the right of audience as an employee, and the same right of audience could be exercised by an unqualified employee; or
    - (D) the right of audience is not reserved by law to any category of persons but is open to any individual; or
  - (ii) to exercise any right to conduct litigation, or to supervise or assume responsibility for the exercise of any such right, unless:
    - (A) he or she is instructed with, and acts in conjunction with, a solicitor of the Supreme Court, or a barrister entitled to exercise the right to conduct that litigation, in accordance with regulation 11 of the European Communities (Lawyer's Practice) Regulations 2000; or
    - (B) the right to conduct the litigation is not reserved by law to any category of persons but is open to any individual; or
    - (C) the right to conduct litigation is an immigration service which could have been provided by an individual who is neither a lawyer nor a legal executive but is registered with the Office of the Immigration Services Commissioner; or
  - (iii) to draw or prepare any instrument relating to contentious proceedings which is reserved to qualified persons by the Solicitors

Act 1974, or to supervise or assume responsibility for any such work, unless:

- (A) he or she is instructed with, and acts in conjunction with, a solicitor of the Supreme Court or barrister in accordance with regulation 11 of the European Communities (Lawyer's Practice) Regulations 2000; or
  - (B) he or she draws or prepares the instrument
    - (I) as an employee, at the direction and under the supervision of an employer or fellow employee in accordance with section 22(2A) of the Solicitors Act 1974 or
    - (II) as a director or employee of a recognised body which is a company, at the direction and under the supervision of a director or employee of the body in accordance with section 9(4) of the Administration of Justice Act 1985 or
    - (III) as a member or employee of a recognised body which is a limited liability partnership, at the direction and under the supervision of a member or employee of the body in accordance with section 9(4) of the Administration of Justice Act 1985; or
- (iv) to draw or prepare any instrument or papers, or make any application or lodge any document, relating to the conveyancing of land or the administration of estates, which is reserved to qualified persons by the Solicitors Act 1974, or to supervise or assume responsibility for any such work; unless:
- (A) he or she is qualified to do so under regulation 12 or 13 of the European Communities (Lawyer's Practice) Regulations 2000; or
  - (B) he or she draws or prepares the instrument or papers, makes the application or lodges the document:
    - (I) as an employee, at the direction and under the supervision of an employer or fellow employee in accordance with section 22(2A) or 23(3) of the Solicitors Act 1974 or
    - (II) as a director or employee of a recognised body which is a company, at the direction and under the supervision of a director or employee of the body in accordance with section 9(4) of the Administration of Justice Act 1985, and without breach of Rule 4(2) of these rules, or
    - (III) as a member or employee of a recognised body which is a limited liability partnership, at the direction and under the supervision of a member or employee of the body in accordance with section 9(4) of the Administration of Justice Act 1985, and without breach of Rule 4(2) of these rules.
- (c) All the principles and requirements of conduct affecting solicitors shall apply in all respects, *mutatis mutandis*:
- (i) to a registered European lawyer established in the United Kingdom; and

- (ii) to a registered foreign lawyer practising as a partner in a partnership permitted by Rule 7(6)(b) or (c) or as a director of a recognised body which is a company or as a member of a recognised body which is a limited liability partnership;

as they apply to a solicitor of the Supreme Court.

- (d) When a registered European lawyer becomes a solicitor of the Supreme Court, any separate practice which he or she may conduct in England and Wales as a lawyer of a state, other than the United Kingdom, to which the Establishment of Lawyers Directive 98/5/EC applies shall be deemed to be that of a solicitor of the Supreme Court practising as such, and these rules and all other rules, principles and requirements of conduct affecting solicitors shall apply in all respects, *mutatis mutandis*, to that practice.

## Notes

- (i) *When a registered European lawyer exercises a right to conduct litigation in conjunction with a solicitor of the Supreme Court who is not in the same firm, it is essential that all concerned should be clear which of the two firms has overall responsibility for the conduct of the matter. Accordingly, it must be made clear to the court, the client and all other parties which is the correct address for correspondence. Only this address, and not the address of the other firm, should be used for all normal purposes. A similar situation may arise when a European lawyer conducts litigation in England and Wales under the Lawyers' Services Directive 77/249/EEC.*
- (ii) *Registered European lawyers qualified in Cyprus, the Czech Republic, Denmark, Finland, Hungary, Iceland, the Irish Republic, Liechtenstein, Norway, Slovakia and Sweden are entitled to do reserved conveyancing work in England and Wales.*
- (iii) *Registered European lawyers qualified in Austria, Cyprus, Denmark, Finland, Germany, Iceland, the Irish Republic, Liechtenstein, Norway, Slovakia and Sweden are entitled to do reserved probate work in England and Wales.*

## (2) (Interpretation)

In these rules, except where the context otherwise requires:

- (a) "arrangement" (in the singular) means any express or tacit agreement between a solicitor and another person whether contractually binding or not;
- (aa) "charity" shall have the same meaning as in section 96(1) of the Charities Act 1993;
- (b) "contentious proceeding" is to be construed in accordance with the definition of "contentious business" in section 87 of the Solicitors Act 1974;
- (c) "contingency fee" means any sum (whether fixed, or calculated either as a percentage of the proceeds or otherwise howsoever) payable only in the event of success in the prosecution or defence of any action, suit or other contentious proceeding;
- (ca) "director" means the director of a company;
- (d) "firm" includes a sole practitioner or a recognised body;

- (da) "foreign lawyer" means an individual who is not a solicitor of the Supreme Court but is a member, and entitled to practise as such, of a legal profession regulated within a jurisdiction outside England and Wales;
- (db) "limited liability partnership" means a limited liability partnership formed by being incorporated under the Limited Liability Partnerships Act 2000;
- (dc) "partnership" means an unincorporated partnership, and does not include a limited liability partnership;
- (e) "person" includes a body corporate or unincorporated association or group of persons;
- (f) "recognised body" means a body corporate for the time being recognised by the Council under the Solicitors' Incorporated Practice Rules from time to time in force;
- (fa) "registered European lawyer" means an individual registered with the Law Society under regulation 17 of the European Communities (Lawyer's Practice) Regulations 2000; and "register of European lawyers" means the register maintained by the Society for that purpose;
- (fb) "registered foreign lawyer" means an individual registered with the Law Society under section 89 of the Courts and Legal Services Act 1990; and "register of foreign lawyers" means the register maintained by the Society for that purpose;
- (fc) "regulated individual" means:
  - (i) a solicitor of the Supreme Court;
  - (ii) a registered European lawyer who is established in the United Kingdom; or
  - (iii) a registered foreign lawyer practising as a partner in a partnership permitted by Rule 7(6)(b) or (c) or as a director of a recognised body which is a company or as a member of a recognised body which is a limited liability partnership;
- (fd) "regulated practice" means:
  - (i) the sole practice of a solicitor of the Supreme Court, or of a registered European lawyer who is established in the United Kingdom;
  - (ii) a partnership permitted by Rule 7(6);
  - (iii) a recognised body, whether practising alone or as a member of a partnership or as a member of a limited liability partnership; or
  - (iv) an in-house practice of solicitors of the Supreme Court, and/or of registered European lawyers who are established in the United Kingdom;
- (fe) "right of audience" and "right to conduct litigation" are to be construed in accordance with Part II and section 119 of the Courts and Legal Services Act 1990;
- (ff) "shareowner" means a member of a body corporate which is a company with a share capital, a beneficial owner of a share in the body held by a member as nominee, or a member of or beneficial owner of a share in a company holding or owning shares in the body;
- (g) "**solicitor**" includes any regulated individual and any regulated practice – except in the phrase "solicitor of the Supreme Court", and except in

Rule 6 (avoiding conflicts in conveyancing, etc.), which has its own definitions;

- (ga) “**solicitor of the Supreme Court**” means an individual who is a solicitor of the Supreme Court of England and Wales; and
- (h) words in the singular include the plural, words in the plural include the singular, and words importing the masculine or feminine gender include the neuter.

## **Rule 19 (Repeal and commencement)**

- (1) The Solicitors' Practice Rules 1988 are hereby repealed.
- (2) These rules shall come into force on 1st September 1990.

# Solicitors' Publicity Code 2001

## Professional Ethics

Last amended 13 January 2003

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# Solicitors' Publicity Code 2001

Last amended 13 January 2003

*Code dated 16 November 2001 promulgated by the Council of the Law Society with the concurrence of the Master of the Rolls under rule 2 of the Solicitors' Practice Rules 1990, regulating the publicity of:*

- ◆ *solicitors, registered European lawyers and recognised bodies practising in England and Wales; and*
- ◆ *registered foreign lawyers practising in England and Wales in partnership with solicitors or registered European lawyers.*

## Section 1 – General principles

### (a) Misleading or inaccurate publicity

Publicity must not be misleading or inaccurate.

### (b) Clarity as to charges

Any publicity as to charges or a basis of charging must be clearly expressed. It must be clear whether disbursements and VAT are included.

### (c) Name of firm

A private practice must not use a name or description which is misleading. It would be misleading for a name or description to include the word "solicitor(s)", if none of the principals or directors (or members in the case of a limited liability partnership) is a solicitor.

### (d) Unsolicited visits or telephone calls

- (i) Practitioners must not publicise their practices by making unsolicited visits or telephone calls to a member of the public.
- (ii) "Member of the public" does not include:
  - (A) a current or former client;
  - (B) another lawyer;
  - (C) an existing or potential professional or business connection; or
  - (D) a commercial organisation or public body.

### (e) Addresses to the court

It is not proper for practitioners to distribute to the press, radio or television copies of a speech or address to any court, tribunal or inquiry, except at the time and place of the hearing to persons attending the hearing to report the proceedings.

### (f) International aspects of publicity

Publicity intended for a jurisdiction outside England and Wales must comply with:

- (i) the provisions of this code; and
- (ii) the rules in force in that jurisdiction concerning lawyers' publicity.

Publicity intended for a jurisdiction where it is permitted will not breach this paragraph through being incidentally received in a jurisdiction where it is not permitted.

### **(g) Practitioners' responsibility for publicity**

A practitioner must not authorise any other person to conduct publicity for the practitioner's practice in a way which would be contrary to this code.

### **(h) Application**

This section of the code applies to all forms of publicity including stationery, advertisements, brochures, directory entries, media appearances, press releases promoting a practice, and direct approaches to potential clients and other persons, and whether conducted in person, in writing, or in electronic form.

## **Section 2 – Professional stationery**

- (a) The letterhead of a private practice must bear the words "regulated by the Law Society".
- (b) (i) The letterhead of:
  - (A) a sole principal must include the name of the sole principal;
  - (B) a partnership of 20 or fewer persons must include a list of the partners;
  - (C) a recognised body which is a company with a sole director must include the name of the director, identified as director.
- (ii) The letterhead of:
  - (A) a partnership of more than 20 persons must include either a list of the partners,
  - (B) a recognised body which is a limited liability partnership must include either a list of the members, identified as members,
  - (C) a recognised body which is a company with more than one director must include either a list of the directors, identified as directors,or a statement that the list is open to inspection at the office.
- (iii) (A) On the letterhead of a recognised body which is an unlimited company; or
  - (B) in the list of partners referred to in sub-paragraph (i) or (ii) above, if a partnership has an unlimited company as a member; or
  - (C) in the list of members referred to in sub-paragraph (ii) above, if a limited liability partnership has an unlimited company as a member;it shall be stated, either as part of the unlimited company's name or otherwise, that the unlimited company is a body corporate.

- (c) In a private practice, if the partners (or directors in the case of a company, or members in the case of a limited liability partnership) comprise both solicitors and foreign lawyers, the list referred to in (b)(i) or (ii) above must:
  - (i) in the case of any solicitor, identify him or her as a solicitor;
  - (ii) in the case of any lawyer or notary of a state (other than the UK) covered by the Establishment of Lawyers Directive 98/5/EC:
    - (A) identify the European jurisdiction(s) – local or national as appropriate – under whose professional title he or she is practising;
    - (B) give the professional title, expressed in an official language of the European state(s) concerned; and
    - (C) if the lawyer is a registered European lawyer, refer to his or her registration with the Law Society; and
  - (iii) in the case of any registered foreign lawyer not included in (c)(ii) above, indicate his or her professional qualification(s) as a lawyer and the country or jurisdiction of qualification.
- (d) Whenever a registered European lawyer is named on the letterhead used by any private or in-house practice, there must be compliance with paragraph (c)(ii) above.

### **Section 3 – Interpretation and repeal**

- (a) In this code, words have the meanings assigned to them in rule 18 of the Solicitors' Practice Rules 1990, except that:
  - (i) "letterhead" includes a fax heading; and
  - (ii) "solicitor" means a solicitor of the Supreme Court.
- (b) This code replaces the Solicitors' Publicity Code 1990.

# Solicitors' Introduction and Referral Code 1990

## Professional Ethics

Last amended 7 October 2004

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# Solicitors' Introduction and Referral Code 1990

Last amended 7 October 2004

*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.

# Employed Solicitors Code 1990

## Professional Ethics

Last amended 8 June 2006

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# Employed Solicitors Code 1990

Last amended 8 June 2006

*Code dated 18th July 1990 promulgated by the Council of the Law Society with the concurrence of the Master of the Rolls under Rule 4 of the Solicitors' Practice Rules 1990, regulating solicitors and registered European lawyers in employed practice in England and Wales.*

## 1. General

- (a) This code applies to solicitors employed by non-solicitor employers in the course of the solicitor's employment with such a non-solicitor employer. This code does not apply to any private practice of such solicitors. The code sets out the principles to be followed and the conditions which must apply whenever an employed solicitor, as part of his or her employment, acts for a person other than the employer in accordance with the provisions of the code.

### Scope of the code

- (aa) (i) The code applies to solicitors of the Supreme Court and to registered European lawyers. (See the definition of "solicitor" in Practice Rule 18(2).)
- (ii) The code does not apply to employees of a registered European lawyer in sole practice, employees of a lawyers' partnership which includes a solicitor of the Supreme Court, registered European lawyer or recognised body, or employees of a recognised body.

### Conflict of interest

- (b) Despite anything in this code employed solicitors must not act in any situation where they would be precluded from acting by an actual or potential conflict of interest.

### Practice rules

- (c) Nothing in this code should be taken as sanctioning conduct inconsistent with the principle of the solicitor's independence as embodied in Rule 1 of the Solicitors' Practice Rules 1990 or with any other provisions of those rules.

### Best interests of client

- (d) The solicitor should, before accepting instructions to act for persons other than the employer in accordance with this code, consider whether the employer is able by way of insurance or otherwise to indemnify the client adequately in the event of a claim against the solicitor for which the employer would be vicariously liable. This provision does not apply where an employed solicitor is acting under the terms of paragraph 8A (foreign law firms).

### Confidentiality

- (e) Where an employed solicitor is acting for a person other than the employer in accordance with this code any information disclosed to the solicitor by the client

is confidential and cannot be disclosed to the employer without the express consent of the client. This provision does not apply where an employed solicitor is acting under the terms of paragraph 8A (foreign law firms).

## **Indemnity**

- (f) The solicitor must ensure at the outset of the matter that the client has been made aware of the insurance position in that the solicitor is not covered by compulsory insurance under the Solicitors' Indemnity Insurance Rules in relation to professional negligence, and that the client receives or has received notice in writing of the position. This provision does not apply where an employed solicitor is acting under the terms of paragraph 8A (foreign law firms).

## **1A. Pro bono work**

- (a) A solicitor may, in the course of his or her employment, conduct work on a pro bono basis for a client other than the employer, provided;
  - (i) the work is covered by an indemnity reasonably equivalent to that required under the Solicitors' Indemnity Insurance Rules; and
  - (ii) either:
    - (A) no fees are charged to the client; or
    - (B) a conditional fee agreement is used and the only fees charged are those which the solicitor receives by way of costs from the client's opponent or other third party and pays to a charity under a fee sharing agreement.
- (b) Nothing in sub-paragraph (a) above shall permit an employed solicitor to conduct work on a pro bono basis in conjunction with services provided by the employer under paragraph 3 (associations), paragraph 4 (insurance), paragraph 8 (commercial legal advice services) or paragraph 8A (foreign law firms).

## **2. Fellow employees**

Where it is not prohibited by the principles set out in paragraph 1 above, and subject to provisos (i)–(iv) below, an employed solicitor may act for:

- (a) a fellow employee;
- (b) a director, the company secretary, a board member or (if the employer is a limited liability partnership) a member of the solicitor's employer;
- (c) an employee, a director, the company secretary, a board member, a trustee or (if the related body is a limited liability partnership) a member of a related body of the employer within the meaning of paragraphs 5(a) or 6(b) below;
- (d) a contributor to a programme or periodical publication, broadcast or published by the solicitor's employer (or by a related body within the meaning of paragraphs 5(a) or 6(b) below), but only where the contributor is a defendant or potential defendant in a defamation case; and

- (e) in conveyancing transactions, where acting in accordance with this code for any person in sub-paragraph (a) to (c) above, the employed solicitor may also act for a joint owner/buyer and for a mortgagee;

**provided in every case that:**

- (i) the matter relates to or arises out of the work of the employee, director, company secretary, board member, trustee, member or contributor in that capacity; and
- (ii) the matter does not relate to a claim arising as a result of a personal injury to the employee, director, company secretary, board member, trustee or member; and
- (iii) the solicitor is satisfied that the employee, director, company secretary, board member, trustee, member or contributor does not wish to instruct some other solicitor or other qualified conveyancer; and
- (iv) there is no charge to the employee, director, company secretary, board member, trustee, member or contributor in relation to the solicitor's costs insofar as they are not recoverable from any other source.

### **3. Associations**

A solicitor who is the employee of an association may act for a member provided:

- (a) the membership of the association is limited to persons engaged or concerned in a particular trade, occupation or activity or otherwise having a community of interest; and
- (b) the association is one formed bona fide for the benefit of its members and not formed directly or indirectly for the benefit of the solicitor or primarily for securing assistance in legal proceedings; and
- (c) there shall be no charge to the member in non-contentious matters; and in contentious matters the association shall indemnify the member in relation to the solicitor's costs and disbursements insofar as they are not recoverable from any other source.

### **4. Insurance**

- (a) A solicitor who is the employee of an insurer subrogated to the rights of an insured in respect of any matter may act on behalf of the insurer in relation to that matter in the name of the insured, and if he does so may:
  - (i) act on behalf of the insured in relation also to uninsured losses in respect of the matter;
  - (ii) act in proceedings both for the insured and for a defendant covered by another insurer where the insurers have agreed an apportionment of liability; and/or
  - (iii) act in the matter on behalf of the employer and another insurer in the joint prosecution of a claim.
- (b) A solicitor who is the employee of a legal expenses insurer may handle on behalf of an insured a claim (other than a personal injury claim) the value of

which does not exceed the "no costs" limit from time to time in operation in the county court, provided the insured gives specific consent.

## **5. Related bodies**

- (a) An employed solicitor may act for:
  - (i) the employer's holding, associated or subsidiary company;
  - (ii) a partnership, syndicate, limited liability partnership or company by way of joint venture in which the employer and others have an interest;
  - (iii) a trade association of which the employer is a member;
  - (iv) a club, association, pension fund or other scheme operated for the benefit of employees of the employer.
- (b) Sub-paragraphs (a)(i) and (ii) above do not apply to local government.

## **6. Local government**

A solicitor employed in local government may act:

- (a) for another public body or statutory officer to which the employer is statutorily empowered to provide legal services; or
- (b) for a company limited by shares or guarantee of which the employer or nominee of the employer is a shareholder or guarantor in pursuance of its statutory powers and of which the solicitor or an officer of the employer is a director or secretary; together with any wholly owned subsidiary or associated companies of such a company; provided that in the case of a company limited by shares the majority of the shares are owned by either the employer or by the employer together with other public bodies; or
- (c) for lenders in connection with new mortgages arising from the redemption of mortgages to the local authority, provided:
  - (i) no employed solicitor or other employee acts on behalf of the borrowers; and
  - (ii) the borrowers are given the opportunity to be independently advised by a solicitor or other qualified conveyancer of their choice; or
- (d) in non-contentious matters for a charity or voluntary organisation whose objects relate wholly or mainly to the employer's area, provided there is no charge to the charity or organisation; or
- (e) for a patient the subject of a Court of Protection Order where the solicitor is acting for a fellow employee (under the provisions of paragraph 2 above) who is appointed as receiver for the patient.

## **7. Law centres, charities and other non-commercial advice services**

- (a) A solicitor who is the employee of a law centre or advice service operated by a charitable or similar non-commercial organisation may give advice to and otherwise act for members of the public, provided:
- (i) no funding agent has majority representation on the body responsible for the management of the service, which body must remain independent of central and local government; and
  - (ii) no fees are charged save:
    - (A) under the legal aid scheme; or
    - (B) where the organisation indemnifies the client in relation to the solicitor's costs insofar as they are not recoverable from any other source; and
  - (iii) all fees earned and costs recovered by the solicitor are paid to the organisation for furthering the provision of the organisation's services; and
  - (iv) the organisation is not described as a law centre unless it is a member of the Law Centres Federation; and
  - (v) the organisation effects indemnity cover reasonably equivalent to that required of solicitors under the Solicitors' Indemnity Insurance Rules.
- (b) Sub-paragraph (a) above does not extend to an association formed for the benefit of its members.

## **8. Commercial legal advice services**

A solicitor who is the employee of a commercial organisation providing a telephone legal advice service may advise enquirers, provided:

- (a) subject to paragraph 4(b) above, the advice comprises telephone advice only, together with a follow up letter to the enquirer when necessary; and
- (b) the solicitor is satisfied that there is indemnity cover reasonably equivalent to that required of solicitors under the Solicitors' Indemnity Insurance Rules.

### **8A. Foreign law firms**

- (a) A solicitor who is the employee of
- (i) a practising foreign lawyer (other than a lawyer who has been struck off the register of foreign lawyers or the register of European lawyers, or whose registration is suspended); or
  - (ii) a law firm whose principals are all practising foreign lawyers (none of whom has been struck off the register of foreign lawyers or the register of European lawyers, or whose registration is suspended); or

- (iii) a corporate body wholly owned and directed by practising foreign lawyers (none of whom has been struck off the register of foreign lawyers or the register of European lawyers, or whose registration is suspended)

may provide legal services to the employer's clients, subject to the conditions set out in sub-paragraph (b) below.

- (b) When a solicitor acts for the employer's clients under sub-paragraph (a) the following conditions must be met:
  - (i) The solicitor must not do, or supervise or assume responsibility for, any of the following:
    - (A) drawing or preparing any instrument or papers, or making any application or lodging any document, relating to litigation, the transfer of property or the administration of estates, which is reserved to qualified persons by the Solicitors Act 1974; or
    - (B) exercising any right of audience, or right to conduct litigation, for which the solicitor would have to rely on his or her qualification as a solicitor; or
    - (C) providing any immigration advice or immigration services, unless the employer, or a senior fellow-employee, is registered with the Immigration Services Commissioner.
  - (ii) The solicitor must ensure that professional indemnity insurance reasonably equivalent to that required under the Solicitors' Indemnity Insurance Rules is in place and will cover all legal work undertaken by the solicitor for clients of the employer.
  - (iii) If the solicitor is held out to a client as a solicitor (or as an English or Welsh lawyer) in connection with work the solicitor is doing for that client, the solicitor must, as soon as possible thereafter, inform the client that the firm is not regulated by the Law Society and that the Law Society's insurance scheme does not apply; and either give or confirm this information in writing.
  - (iv) The solicitor must ensure that if he or she is identified on the notepaper as a solicitor (or as an English or Welsh lawyer) the notepaper also states that the firm is not regulated by the Law Society.
- (c) Sub-paragraphs (b)(iii) and (iv) should also be read as referring to a registered European lawyer being held out or identified as a lawyer or under his or her home title.

## **9. Government departments, regulatory bodies and the Legal Services Commission**

A solicitor who is the employee of a government department, a regulatory body or the Legal Services Commission (and any body established and/or maintained by the Legal Services Commission) may in carrying out the function of the employer give legal advice to other persons and in the case of statutory functions may act generally for such persons.

## 10. Interpretation

In this code:

- (a) all words have the meanings assigned to them in Rule 18 of the Solicitors' Practice Rules 1990; except that
  - “foreign lawyer” in paragraph 8A (foreign law firms) means an individual who is a member, and entitled to practise as such, of a legal profession regulated within a jurisdiction other than England and Wales, and who is not as a principal, owner or director of the firm, or otherwise, practising through that firm as a solicitor of the Supreme Court or as a registered European lawyer;
- (aa) “employee” includes a solicitor of the Supreme Court or registered European lawyer practising in house as the director of a company which is not a recognised body, and “employer”, “employment” and “employed” are to be construed accordingly;
- (b) “act” includes the giving of legal advice, and the provision of advocacy services;
- (c) “holding company” and “subsidiary company” have the meanings assigned to them by the Companies Act 1985 (as amended by the Companies Act 1989) and two companies are “associated” where they are subsidiary companies of the same holding company;
- (d) save in paragraph 1, references to a solicitor's employer include the employer's holding, associated or subsidiary company; and references to an employee include references to an employee of such holding, associated or subsidiary company.

# Solicitors' Separate Business Code 1994

## Professional Ethics

Last amended 7 October 2004

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# Solicitors' Separate Business Code 1994

Last amended 7 October 2004

*Code dated 4th February 1994 made by the Council of the Law Society with the concurrence of the Master of the Rolls under rule 5 of the Solicitors' Practice Rules 1990, regulating the circumstances in which solicitors, registered European lawyers, registered foreign lawyers and recognised bodies, practising in England and Wales, may provide certain services other than through their practices.*

## Section 1: Explanatory provisions

- (1) This code aims to ensure that members of the public know whether a service is provided by a solicitor practising as such (and thus regulated by the Law Society and affording clients certain statutory protections) or outside the scope of a solicitor's practice (and thus outside the regulation of the Law Society, and not affording any of the statutory protections extended to the clients of a solicitor).
- (2) This code prohibits a practising solicitor from providing certain legal services other than as a solicitor and requires that certain safeguards be observed where there is a connection between a solicitor's practice and his or her separate business. However, neither the Practice Rules nor this code regulate solicitors' separate businesses, and such separate businesses are not underwritten by the Solicitors' Compensation Fund or covered by indemnity insurance under the Law Society's compulsory scheme.
- (3) Practice Rule 5 and this code apply to solicitors of the Supreme Court and registered European lawyers practising as such in England and Wales, whether in private practice or employed practice, to recognised bodies, and to registered foreign lawyers practising in England and Wales in partnership with solicitors of the Supreme Court or registered European lawyers or as directors of recognised bodies which are companies or as members of recognised bodies which are limited liability partnerships.
- (4) A solicitor who is a partner in a firm with an office in England and Wales is practising in England and Wales and is therefore subject to Practice Rule 5 and this code, even if he or she is based at an office outside the jurisdiction.
- (5) Rule 5 and this code do not apply to a solicitor solely by virtue of the fact that:
  - (a) the solicitor is a non-executive director of a company; or
  - (b) the solicitor, as the employee of a non-solicitor, does work permitted by virtue of Rule 4 of the Solicitors' Practice Rules 1990; or
  - (c) the solicitor operates a separate practice as a notary public in conjunction with his or her practice as a solicitor.
- (6) This code applies whether a separate business is in England and Wales, or outside the jurisdiction.

## Section 2: Interpretation

In this code:

- (a) "separate business" means a business which:
  - (i) provides any service which may properly be provided by a solicitor's practice, and
  - (ii) is not itself:
    - (A) a regulated practice (as defined in Practice Rule 18); or
    - (B) a practice permitted to solicitors of the Supreme Court under the Solicitors' Overseas Practice Rules; or
    - (C) a practice in Scotland or Northern Ireland permitted to registered European lawyers under the Solicitors' Overseas Practice Rules;
- (b) references to a solicitor who has a separate business are references to a solicitor who (alone, or by or with others) controls, actively participates in or operates a separate business;
- (c) Practice Rule 18 governs the application and interpretation of this code; and "solicitor" has the extended meaning given in that rule, and covers any regulated individual and any regulated practice;
- (d) "investment business" means any "regulated activity" as defined in the Financial Services and Markets Act 2000;
- (e) any reference to selling or buying property includes granting or taking a lease for value; and
- (f) "overseas" means in or of a jurisdiction other than England and Wales.

## Section 3: Services which may only be provided through a solicitors' practice

Subject to the exceptions in Sections 4, 5, 6 and 7, a solicitor must not have a separate business which provides any of the following services:

- (a) the conduct of any matter which could proceed before any court, tribunal or inquiry, whether or not proceedings are commenced;
- (b) advocacy before any court, tribunal or inquiry;
- (c) instructing counsel in any part of the United Kingdom;
- (ca) immigration advice or immigration services;
- (d) acting as executor, trustee or nominee in England and Wales;
- (e) drafting any will or trust deed;
- (f) giving legal advice;
- (g) any activity reserved to solicitors (whether solely or together with other persons) by the Solicitors Act 1974 or any other statute; and
- (h) drafting any legal documents not already covered by (a) to (g) above.

## Section 4: Safeguards and exceptions – separate businesses generally

### **Requirements:**

- (1) A solicitor who has a separate business must do nothing in the course of practice, or in the course of making and accepting referrals, connected with that separate business, which is likely to compromise or impair any of the principles set out in Practice Rule 1. The requirements of the Solicitors' Introduction and Referral Code apply to referrals generally, including referral of a client by a solicitor to his or her own separate business.
- (2) A solicitor who has a separate business must ensure:
  - (a) that the name of any practice of the solicitor has no substantial element in common with the name of that separate business;
  - (b) that the words "solicitor(s)", "attorney(s)" or "lawyer(s)", or any equivalent expressions in another language, are not used in connection with the solicitor's involvement with that separate business;
  - (c) that paperwork and records relating to customers of the separate business are kept separately from paperwork and records relating to clients of the solicitor (whether or not those customers are also clients of the solicitor);
  - (d) that all clients referred by any English or Welsh practice of the solicitor to the separate business are informed in writing of the solicitor's interest in the business and that, as customers of the separate business, they do not enjoy the statutory protections attaching to clients of a solicitor (or a registered European lawyer, a recognised body, or a lawyers' partnership regulated by the Law Society, as the case may be);
  - (e) that where the separate business shares premises, office accommodation or reception staff with any English or Welsh practice of the solicitor, all customers of the separate business are informed in writing that, as customers of the separate business, they do not enjoy the statutory protections attaching to the clients of a solicitor (or a registered European lawyer, a recognised body, or a lawyers' partnership regulated by the Law Society, as the case may be); and
  - (f) that the solicitor does not hold on the client account of the solicitor's practice money held for customers of the separate business as such; or money held for the separate business.

### **Exceptions:**

- (3) The requirements in paragraph (2)(a)–(f) above do not apply to a separate business covered by Section 5 except to the extent specified in that section.
- (4) The prohibitions in Section 3(f) and (h) (giving legal advice and drafting certain legal documents) shall not apply to prevent a solicitor from having a separate business which provides such advice and drafts such documents if:
  - (a) this is undertaken only as a necessary but subsidiary part of a main service or services provided by the separate business; and

- (b) the main service or services provided by the separate business do not include one or more of the services set out in Section 3(a)–(h).

## **Section 5: Safeguards and exceptions – particular businesses**

### **(1) Investment business**

#### ***Requirements:***

A solicitor who has a separate business providing investment business services must ensure:

- (a) that the requirements of Section 4(1) and (2)(a), (b), (c) and (f) are observed; and
- (b) that the separate business is conducted from accommodation physically divided and clearly differentiated from that of any practice of the solicitor in England and Wales; and
- (c) that there is compliance with Practice Rule 12(1)(b) and (2); and
- (d) that all clients referred by any English or Welsh practice of the solicitor to the separate business are informed of the solicitor's interest in the business and that, as customers of the separate business, they do not enjoy the statutory protections attaching to clients of a solicitor (or a registered European lawyer, a recognised body, or a lawyers' partnership regulated by the Law Society, as the case may be) by the following steps:
  - (i) in a personal interview or telephone call and
  - (ii) in writing confirming the contents of that interview or call; and
- (e) that (without prejudice to (b) above) where the separate business shares premises or reception staff with any English or Welsh practice of the solicitor, all customers of the separate business are informed that, as customers of the separate business, they do not enjoy the statutory protections attaching to clients of a solicitor (or a registered European lawyer, a recognised body, or a lawyers' partnership regulated by the Law Society, as the case may be) by the following steps:
  - (i) in a personal interview or telephone call and
  - (ii) in writing confirming the contents of that interview or call.

#### ***Exceptions:***

The prohibition in Section 3(d) will not apply to prevent such a separate business providing nominee services through its nominee company in England and Wales if this is ancillary to the main purpose of the business.

### **(2) Estate agency**

#### ***Requirements:***

A solicitor who has a separate business providing estate agency

- (a) must comply with Section 4(1) and (2)(a), (b), (c) and (f); and
- (b) must ensure that the separate business is conducted from accommodation physically divided and clearly differentiated from that of any practice of the solicitor in England and Wales; and
- (c) must ensure that all clients referred by any English or Welsh practice of the solicitor to the separate business are informed of the solicitor's interest in the business and that, as customers of the separate business, they do not enjoy the statutory protections attaching to clients of a solicitor (or a registered European lawyer, a recognised body, or a lawyers' partnership regulated by the Law Society, as the case may be) by the following steps:
  - (i) in a personal interview or telephone call and
  - (ii) in writing confirming the contents of that interview or call; and
- (d) must ensure that (without prejudice to (b) above) where the separate business shares premises or reception staff with any English or Welsh practice of the solicitor, all customers of the separate business are informed that, as customers of the separate business, they do not enjoy the statutory protections attaching to clients of a solicitor (or a registered European lawyer, a recognised body, or a lawyers' partnership regulated by the Law Society, as the case may be) by the following steps:
  - (i) in a personal interview or telephone call and
  - (ii) in writing confirming the contents of that interview or call; and
- (e) without prejudice to Practice Rule 6, must not act in the conveyance for the buyer of any property sold through the separate business, unless:
  - (i) the solicitor's practice shares ownership of the separate business with at least one other firm, or other business, in which the solicitor or the solicitor's practice have no financial interest; and
  - (ii) neither the solicitor nor anyone else working in the practice is dealing with or has dealt with the sale of the seller's property for the separate business; and
  - (iii) the buyer has given written consent to the solicitor acting, after the solicitor has explained his or her financial interest in the sale going through.

**(3) Parliamentary agents, trade mark agents, patent agents, European patent attorneys and lawyers of jurisdictions other than England and Wales**

***Requirements:***

- (a) A solicitor who has a separate business as a parliamentary agent, trade mark agent, patent agent, European patent attorney or lawyer of an overseas jurisdiction must ensure that the requirements of Section 4(1) and (2)(d), (e) and (f) are observed.

***Exceptions:***

- (b) The prohibitions in Section 3 shall not apply to prevent a solicitor who is appropriately qualified from having such a separate business.

## Notes

*RELS' and RFLs' separate businesses as lawyers of jurisdictions other than England and Wales*

- (i) *The code, including Section 5(3), will apply to a registered European lawyer in relation to:*
  - (a) *his or her separate practice as a lawyer of a state which is not covered by the Establishment of Lawyers Directive 98/5/EC, without participation of solicitors of the Supreme Court as partners, or as shareowners or directors (in the case of a company), or as members (in the case of a limited liability partnership or other body corporate which is not a company);*
  - (b) *his or her separate practice as a lawyer of a state, other than the United Kingdom, covered by the Establishment of Lawyers Directive 98/5/EC, conducted entirely outside the United Kingdom, and without participation of solicitors of the Supreme Court as partners, or as shareowners or directors (in the case of a company), or as members (in the case of a body corporate which is not a company);*
  - (c) *if the registered European lawyer remains on the register after qualifying as a lawyer of Scotland or Northern Ireland, his or her separate practice as a lawyer of Scotland or Northern Ireland without participation of solicitors of the Supreme Court as partners, or as shareowners or directors (in the case of a company), or as members (in the case of a limited liability partnership).*
- (ii) *The code, including Section 5(3), will apply to a registered foreign lawyer practising in partnership with solicitors or registered European lawyers, or as a director of a recognised body which is a company, or as a member of a recognised body which is a limited liability partnership, in relation to:*
  - (a) *his or her separate practice as a lawyer of a jurisdiction other than England and Wales, conducted wholly or partly in the United Kingdom, and without participation of solicitors of the Supreme Court or registered European lawyers as partners, or as shareowners or directors (in the case of a company), or as members (in the case of a limited liability partnership);*
  - (b) *his or her separate practice as a lawyer of a jurisdiction other than England and Wales, conducted entirely outside the United Kingdom, and without participation of solicitors of the Supreme Court as partners, or as shareowners or directors (in the case of a company), or as members (in the case of a body corporate which is not a company).*

## **(4) Overseas executor, trustee and nominee companies**

### **Requirements:**

A solicitor who has a separate business which is an overseas executor, trustee or nominee company (or other separate business set up overseas to act as executor, trustee or nominee) must ensure:

- (a) that the requirements of Section 4(1) and (2)(a), (b), (c) and (f) are observed; and

- (b) that all clients referred by any English or Welsh practice of the solicitor to the separate business are informed in writing of the solicitor's interest in the business and that, as customers of the separate business, they do not enjoy the statutory protections attaching to clients of a solicitor (or a registered European lawyer, a recognised body, or a lawyers' partnership regulated by the Law Society, as the case may be) by the following steps:
  - (i) in a personal interview or telephone call and
  - (ii) in writing confirming the contents of that interview or call; and
- (c) that where the separate business shares premises or reception staff with any English or Welsh practice of the solicitor, all customers of the separate business are informed that, as customers of the separate business, they do not enjoy the statutory protections attaching to clients of a solicitor (or a registered European lawyer, a recognised body, or a lawyers' partnership regulated by the Law Society, as the case may be) by the following steps:
  - (i) in a personal interview or telephone call and
  - (ii) in writing confirming the contents of that interview or call.

## **Section 6: Overseas businesses unconnected with England and Wales**

If a solicitor has a separate business outside England and Wales which:

- (a) does not offer or provide any service reserved to solicitors of the Supreme Court, or any executor, trustee or nominee service, and is not a separate business of the type referred to in Section 5(3); and
- (b) does not offer or provide any service in England and Wales; and
- (c) does not receive any direct or indirect referral of clients from any practice of the solicitor in England and Wales;

then the solicitor must comply with Section 4(1) and (2), but Sections 3 and 5 will not apply.

## **Section 7: Transitional provision and commencement**

- (1) Until 31 December 2004 neither Practice Rule 5 nor this code shall apply:
  - (a) to the separate business of a registered European lawyer who is qualified as a Swiss lawyer or is a Swiss national and to whom the Establishment Directive 98/5/EC did not apply before 1 June 2002; or
  - (b) to the separate business of a registered European lawyer who is qualified as a lawyer of Iceland, Liechtenstein or Norway or is a national of one of those states and to whom the Establishment Directive 98/5/EC did not apply before 1 March 2003;

if that separate business has no solicitors of the Supreme Court as partners, members, shareowners or directors, and if it was already providing services before that date.

- (2) This code will come into force on 1st June 1994.

# Solicitors' Costs Information and Client Care Code 1999

## Professional Ethics

Last amended 8 June 2006

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# Solicitors' Costs Information and Client Care Code 1999

Last amended 8 June 2006

*Code dated 3rd September 1999 made by the Council of the Law Society with the concurrence of the Master of the Rolls under Rule 15 of the Solicitors' Practice Rules 1990, regulating the English and Welsh practices of solicitors, registered European lawyers, registered foreign lawyers and recognised bodies in giving information to clients and operating complaints procedures.*

## 1. Introduction

- (a) This code replaces the written professional standards on costs information for clients (see paragraphs 3–6) and the detail previously contained in Practice Rule 15 (client care) (see paragraph 7).
- (b) The main object of the code is to make sure that clients are given the information they need to understand what is happening generally and in particular on:
  - (i) the cost of legal services both at the outset and as a matter progresses; and
  - (ii) responsibility for clients' matters.
- (c) The code also requires firms to operate a complaints handling procedure.
- (d) It is good practice to record in writing:
  - (i) all information required to be given by the code including all decisions relating to costs and the arrangements for updating costs information; and
  - (ii) the reasons why the information required by the code has not been given in a particular case.
- (e) References to costs, where appropriate, include fees, VAT and disbursements.

## 2. Application

- (a) The code is of general application, and it applies to registered foreign lawyers as well as to solicitors of the Supreme Court and registered European lawyers (subject to note (v) to Practice Rule 15). However, as set out in paragraph 2(b), parts of the code may not be appropriate in every case, and solicitors should consider the interests of each client in deciding which parts not to apply in the particular circumstances.
- (b) The full information required by the code may be inappropriate, for example:
  - (i) in every case, for a regular client for whom repetitive work is done, where the client has already been provided with the relevant information, although such a client should be informed of changes; and

- (ii) if compliance with the code may at the time be insensitive or impractical. In such a case relevant information should be given as soon as reasonably practicable.
- (c) Employed solicitors should have regard to paragraphs 3–6A of the code where appropriate, e.g. when acting for clients other than their employer. Paragraph 7 does not apply to employed solicitors.
- (d) Solicitors should comply with paragraphs 3–6 of the code even where a client is legally aided if the client may have a financial interest in the costs because contributions are payable or the statutory charge may apply or they may become liable for the costs of another party.
- (da) If appropriate solicitors should also comply with paragraph 6A of the code where a client is legally aided.
- (e) The code also applies to contingency fee and conditional fee arrangements and to arrangements with a client for the solicitor to retain commissions received from third parties.

### **3. Informing the client about costs**

- (a) Costs information must not be inaccurate or misleading.
- (b) Any costs information required to be given by the code must be given clearly, in a way and at a level which is appropriate to the particular client. Any terms with which the client may be unfamiliar, for example "disbursement", should be explained.
- (c) The information required by paragraphs 4 and 5 of the code should be given to a client at the outset of, and at appropriate stages throughout, the matter. All information given orally should be confirmed in writing to the client as soon as possible.

### **4. Advance costs information – general**

#### **The overall costs**

- (a) The solicitor should give the client the best information possible about the likely overall costs, including a breakdown between fees, VAT and disbursements.
- (b) The solicitor should explain clearly to the client the time likely to be spent in dealing with a matter, if time spent is a factor in the calculation of the fees.
- (c) Giving "the best information possible" includes:
  - (i) agreeing a fixed fee; or
  - (ii) giving a realistic estimate; or
  - (iii) giving a forecast within a possible range of costs; or
  - (iv) explaining to the client the reasons why it is not possible to fix, or give a realistic estimate or forecast of, the overall costs, and giving instead the best information possible about the cost of the next stage of the matter.

- (d) The solicitor should, in an appropriate case, explain to a privately paying client that the client may set an upper limit on the firm's costs for which the client may be liable without further authority. Solicitors should not exceed an agreed limit without first obtaining the client's consent.
- (e) The solicitor should make it clear at the outset if an estimate, quotation or other indication of cost is not intended to be fixed.

### **Basis of firm's charges**

- (f) The solicitor should also explain to the client how the firm's fees are calculated except where the overall costs are fixed or clear. If the basis of charging is an hourly charging rate, that must be made clear.
- (g) The client should be told if charging rates may be increased.

### **Further information**

- (h) The solicitor should explain what reasonably foreseeable payments a client may have to make either to the solicitor or to a third party and when those payments are likely to be needed.
- (i) The solicitor should explain to the client the arrangements for updating the costs information as set out in paragraph 6.

### **Client's ability to pay**

- (j) The solicitor should discuss with the client how and when any costs are to be met, and consider:-
  - (i) whether the client may be eligible and should apply for legal aid (including advice and assistance);
  - (ii) whether the client's liability for their own costs may be covered by insurance;
  - (iii) whether the client's liability for another party's costs may be covered by pre-purchased insurance and, if not, whether it would be advisable for the client's liability for another party's costs to be covered by after the event insurance (including in every case where a conditional fee or contingency fee arrangement is proposed); and
  - (iv) whether the client's liability for costs (including the costs of another party) may be paid by another person e.g. an employer or trade union.

### **Cost-benefit and risk**

- (k) The solicitor should discuss with the client whether the likely outcome in a matter will justify the expense or risk involved including, if relevant, the risk of having to bear an opponent's costs.

## **5. Additional information for particular clients**

### **Legally aided clients**

- (a) The solicitor should explain to a legally aided client the client's potential liability for the client's own costs and those of any other party, including:
  - (i) the effect of the statutory charge and its likely amount;
  - (ii) the client's obligation to pay any contribution assessed and the consequences of failing to do so;
  - (iii) the fact that the client may still be ordered by the court to contribute to the opponent's costs if the case is lost even though the client's own costs are covered by legal aid; and
  - (iv) the fact that even if the client wins, the opponent may not be ordered to pay or be capable of paying the full amount of the client's costs.

### **Privately paying clients in contentious matters (and potentially contentious matters)**

- (b) The solicitor should explain to the client the client's potential liability for the client's own costs and for those of any other party, including:
  - (i) the fact that the client will be responsible for paying the firm's bill in full regardless of any order for costs made against an opponent;
  - (ii) the probability that the client will have to pay the opponent's costs as well as the client's own costs if the case is lost;
  - (iii) the fact that even if the client wins, the opponent may not be ordered to pay or be capable of paying the full amount of the client's costs; and
  - (iv) the fact that if the opponent is legally aided the client may not recover costs, even if successful.

### **Liability for third party costs in non-contentious matters**

- (c) The solicitor should explain to the client any liability the client may have for the payment of the costs of a third party. When appropriate, solicitors are advised to obtain a firm figure for or agree a cap to a third party's costs.

### **Clients represented under a conditional fee agreement (including a collective conditional fee agreement)**

- (d) Where a client is represented under a conditional fee agreement, the solicitor should explain:
  - (i) the circumstances in which the client may be liable for their own costs and for the other party's costs;
  - (ii) the client's right to assessment of costs, wherever the solicitor intends to seek payment of any or all of their costs from the client;
  - (iii) any interest the solicitor may have in recommending a particular policy or other funding; and

- (iv) where applicable, the fact that the solicitor is obliged under a fee sharing agreement to pay to a charity any fees which the solicitor receives by way of costs from the client's opponent or other third party.

### **Charitable fee sharing**

- (e) Wherever a solicitor agrees to share his or her fees with a charity in accordance with Practice Rule 7(1)(e) or (3)(b), the solicitor must disclose to the client the name of the charity.

## **6. Updating costs information**

The solicitor should keep the client properly informed about costs as a matter progresses. In particular, the solicitor should:

- (a) tell the client, unless otherwise agreed, how much the costs are at regular intervals (at least every six months) and in appropriate cases deliver interim bills at agreed intervals;
- (b) explain to the client (and confirm in writing) any changed circumstances which will, or which are likely to affect the amount of costs, the degree of risk involved, or the cost-benefit to the client of continuing with the matter;
- (c) inform the client in writing as soon as it appears that a costs estimate or agreed upper limit may or will be exceeded; and
- (d) consider the client's eligibility for legal aid if a material change in the client's means comes to the solicitor's attention.

### **6A. Disclosure of solicitor's arrangements with third parties**

- (a) The solicitor should disclose to the client any relationship with a third party (for example a funder, fee sharer or introducer) which affects the steps which the solicitor can take on the client's behalf.
- (b) The solicitor should explain any constraints or conditions which affect the client.

All information given orally concerning (a) and (b) above should be confirmed in writing to the client as soon as possible.

## **7. Client care and complaints handling**

### **Information for clients**

- (a) Every solicitor in private practice must ensure that the client:
  - (i) is given a clear explanation of the issues raised in a matter and is kept properly informed about its progress (including the likely timescale);

- (ii) is given the name and status of the person dealing with the matter and the name of the principal, or director (in the case of a recognised body which is a company), or member (in the case of a recognised body which is a limited liability partnership) responsible for its overall supervision;
- (iii) is told whom to contact about any problem with the service provided; and
- (iv) is given details of any changes in the information required to be given by this paragraph.

### **Complaints handling**

- (b) Every principal in private practice (or, in the case of a recognised body, the body itself) must:
  - (i) ensure the client is told the name of the person in the firm to contact about any problem with the service provided;
  - (ii) have a written complaints procedure and ensure that complaints are handled in accordance with it; and
  - (iii) ensure that the client is given a copy of the complaints procedure on request.

# The Law Society's Code for Advocacy

## Professional Ethics

Last amended 13 January 2003

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# The Law Society's Code for Advocacy

Last amended 13 January 2003

*Code dated 8th December 1993 made by the Council of the Law Society with the concurrence of the Master of the Rolls under rule 16A of the Solicitors' Practice Rules 1990 and rule 1(4) of the Solicitors' Overseas Practice Rules 1990, regulating advocacy in England and Wales by solicitors and registered European lawyers.*

## PART I – Introduction

1.1 For the purpose of maintaining the proper and efficient administration of justice this Code sets out the principles and standards to be observed by all solicitor advocates when acting as such. These obligations are in addition to and do not replace those imposed by law or required by other Law Society rules.

1.2 In this Code except where otherwise indicated:

"the Act" means the Courts and Legal Services Act 1990 and where the context permits includes any orders or regulations made pursuant to powers conferred thereby;

"advocate" means an authorised advocate as defined in Section 119 of the Act;

"brief" means instructions to an advocate to appear in person at or before a court;

"client" means the lay client and also (in the case of an advocate with a professional intermediary) the professional client and where the context permits includes a prospective client;

"court" means:

- (i) any court of record (the House of Lords, the Court of Appeal, the High Court, the Crown Court, county courts, magistrates' courts, coroners' courts, the Employment Appeals Tribunal, the Solicitors' Disciplinary Tribunal);
- (ii) any tribunal which the Council on Tribunals is under a duty to keep under review;
- (iii) any court martial; and
- (iv) a statutory inquiry within the meaning of Section 16 of the Tribunals and Inquiries Act 1992;

"litigator" means an authorised litigator as defined in Section 119 of the Act;

"recognised body" means a body corporate for the time being recognised by the Council under the Solicitors' Incorporated Practice Rules;

"registered European lawyer" means an individual registered with the Law Society under regulation 17 of the European Communities (Lawyer's Practice) Regulations 2000;

"solicitor advocate" means a solicitor of the Supreme Court or registered European lawyer providing advocacy services as defined in Section 119 of the Act.

## **PART II – Fundamental principles**

### 2.1 Advocates must not:

- (a) engage in conduct whether in pursuit of their profession or otherwise which is:
  - (i) dishonest or otherwise discreditable to an advocate;
  - (ii) prejudicial to the administration of justice; or
  - (iii) likely to diminish public confidence in the legal profession or the administration of justice or otherwise bring the legal profession into disrepute;
- (b) engage directly or indirectly in any occupation if their association with that occupation may adversely affect the reputation of advocates or prejudice their ability to attend properly to the interests of clients.

### 2.2 Advocates have an overriding duty to the court to ensure in the public interest that the proper and efficient administration of justice is achieved: they must assist the court in the administration of justice and must not deceive or knowingly or recklessly mislead the court.

### 2.3 Advocates:

- (a) must promote and protect fearlessly and by all proper and lawful means the clients' best interests and do so without regard to their own interests or to any consequences to themselves or to any other person (including professional clients or fellow advocates or members of the legal profession);
- (b) subject only to compliance with the specific provisions of Legal Aid Regulations owe their primary duty:
  - (i) as between their lay client and their professional client; and
  - (ii) as between the legal aid authorities and the lay client:  
to the lay client and must not permit the legal aid authorities or professional clients to limit their discretion as to how the interests of the lay client can best be served;
- (c) must act towards clients at all times in good faith.

### 2.4.1 Advocates must not in relation to any other person (including a client or another advocate) on grounds of race, ethnic origin, gender, religion, sexual orientation or political persuasion treat that person for any purpose less favourably than they would treat other such persons.

### 2.4.2 Advocates must not decline to accept instructions to act as such:

- (a) on grounds relating to the race, colour, ethnic or national origins, creed, gender or sexual orientation of the client;
- (b) on the grounds that the nature of the case is objectionable to the advocate or to any section of the public;
- (c) on the grounds that the conduct, opinions or beliefs of the client are unacceptable to the advocate or to any section of the public;
- (d) on any ground relating to the source of any financial support which may properly be given to the client for the proceedings in question (for example on the grounds that such support will be available under the Legal Aid Act 1988).

- 2.5 Nothing in this Code is to be taken as requiring an advocate to accept instructions if there are reasonable grounds for the advocate to consider that having regard to:
- (i) the circumstances of the case;
  - (ii) the nature of the advocate's practice; or
  - (iii) the advocate's experience and standing
- the advocate is not being offered a proper fee.
- 2.6 Advocates must not:
- (a) permit their absolute independence and freedom from external pressures to be compromised;
  - (b) do anything (for example accept a present) in such circumstances as may lead to any inference that their independence may be compromised;
  - (c) compromise their professional standards in order to please their clients, the court or a third party;
  - (d) except as permitted by the Act, accept a brief on terms that payment of fees shall depend upon or be related to or postponed on account of the outcome of the case or of any hearing.
- 2.7 Advocates are individually and personally responsible for their own conduct and for professional work: they must exercise their own personal judgment in all their professional activities and must not delegate such responsibility to another advocate.
- 2.8 Without prejudice to paragraph 2.7, a registered European lawyer must not exercise any right of audience unless:
- (a) the right of audience is one for the exercise of which a solicitor of the Supreme Court would require a higher courts qualification, and the registered European lawyer has an appropriate higher courts qualification and is instructed with, and acts in conjunction with, a solicitor of the Supreme Court who has an appropriate higher courts qualification or a barrister in accordance with regulation 11 of the European Communities (Lawyer's Practice) Regulations 2000; or
  - (b) the right of audience is one which a solicitor of the Supreme Court could exercise without a higher courts qualification, and the registered European lawyer is instructed with, and acts in conjunction with, a solicitor of the Supreme Court or a barrister in accordance with regulation 11 of the European Communities (Lawyer's Practice) Regulations 2000; or
  - (c) the registered European lawyer is exercising the right of audience as an employee, and the same right of audience could be exercised by an unqualified employee; or
  - (d) the right of audience is not reserved by law to any category of persons but is open to any individual; or
  - (e) the right of audience is an immigration service which could have been provided by an individual who is neither a lawyer nor a legal executive but is registered with the Office of the Immigration Services Commissioner.

## **PART III – Organisation of the advocate’s practice**

- 3.1 Advocates must have or have ready access to library facilities which are adequate having regard to the nature of their practice.
- 3.2 Advocates must take all steps which it is reasonable in the circumstances to take to ensure that:
- (a) their practices are administered competently and efficiently and properly staffed having regard to the nature of the practice;
  - (b) proper records are kept;
  - (c) all employees and staff in the practice:
    - (i) carry out their duties in a correct and efficient manner; and
    - (ii) are made clearly aware of such provisions of this Code as may affect or be relevant to the performance of their duties.
- 3.3 Advocates may engage in any advertising or promotion in connection with their practice which conforms to the Solicitors' Publicity Code (and such advertising or promotion may include photographs or other illustrations of the advocate, statements of rates and methods of charging, statements about the nature and extent of the advocate's services and with that client's express written consent the name of any client) but advertising or promotion must not:
- (a) be inaccurate or likely to mislead;
  - (b) be likely to diminish public confidence in the legal profession or the administration of justice or otherwise bring the legal profession into disrepute;
  - (c) make comparison with or criticisms of other advocates;
  - (d) include statements about the advocate's success rate;
  - (e) indicate or imply any willingness to accept a brief, or any intention to restrict the persons from whom a brief may be accepted, otherwise than in accordance with this Code;
  - (f) be so frequent or obtrusive as to cause justifiable annoyance to those to whom it is directed.

## **PART IV – The decision to appear**

- 4.1 Advocates must not accept any brief if to do so would cause them to be professionally embarrassed and for this purpose advocates will be professionally embarrassed:
- (aa) in the case of extended rights of audience in the higher courts, if they do not hold the appropriate qualification and are not competent to appear before the relevant court;
  - (a) if they lack sufficient experience or competence to handle the matter, or if their experience of advocacy in the relevant court or proceedings has been so infrequent or so remote in time as to prejudice their competence;
  - (b) if having regard to their other professional commitments they will be unable to do or will not have adequate time and opportunity to prepare that which they are required to do;

- (c) if the brief seeks to limit the ordinary authority of discretion of an advocate in the conduct of proceedings in court or to impose on an advocate an obligation to act otherwise than in conformity with the provisions of this Code;
- (d) if the matter is one in which they have reason to believe that they are likely to be witnesses or in which, whether by reason of any connection of the advocate (or of any partner or other associate of the advocate) with the client or with the court or a member of it or otherwise, it will be difficult for them to maintain professional independence or the administration of justice might be or appear to be prejudiced;
- (e) if they have been responsible for deciding on a course of action and the legality of that action is in dispute in the proceedings; if they are company directors and the company is a party to the proceedings;
- (f) if there is or appears to be some conflict or a significant risk of some conflict either between the interests of the advocate (or of any partner or other associate of the advocate) and some other person or between the interests of any one or more of their clients;
- (g) if the matter is one in which there is a risk of a breach of confidences entrusted to them (or to any partner or other associate) by another client or where the knowledge which they possess of the affairs of another client would give an undue advantage to the new client.

4.2 Queen's Counsel are not obliged to accept a brief to act without a junior if they consider that the interests of the lay client require that a junior should also be instructed.

4.3.1 Advocates (whether or not they are also litigators and whether they are instructed on their own or with another advocate) must in the case of each brief consider whether consistently with the proper and efficient administration of justice and having regard to:

- (i) the circumstances including the gravity, complexity and likely cost of the case;
- (ii) the nature of their practice;
- (iii) their ability, experience and seniority;
- (iv) their relationship with the client;

the best interests of the client would be served by instructing or continuing to instruct them in that matter.

4.3.2 Where more than one advocate is instructed in any matter each advocate must in particular consider whether the best interests of the client would be served by:

- (a) the advocate representing the client together with the other advocate or advocates; or
- (b) the advocate representing the client without the other advocate or advocates; or
- (c) the client instructing only the other advocate or advocates; or
- (d) the client instructing some other advocate.

- 4.3.3 If they consider that the best interests of the client would not be served by their continuing to represent the client (together with any other advocate instructed with them) advocates must immediately advise the lay client accordingly.

## **PART V – Withdrawal from a case**

### 5.1 Advocates must cease to act and return any brief:

- (a) if continuing to act would cause them to be professionally embarrassed within the meaning of paragraph 4.1 provided that if they would be professionally embarrassed only because it appears to them that they are likely to be witnesses on a material question of fact they may retire or withdraw only if they can do so without jeopardising the clients' interests;
- (b) if having accepted a brief on behalf of more than one client there is or appears to be:
  - (i) a conflict or a significant risk of a conflict between the interests of any one or more of such clients; or
  - (ii) a risk of a breach of confidence;and the clients do not all consent to them continuing to act;
- (c) if in any legally aided case (whether civil or criminal) it has become apparent to them that legal aid has been wrongly obtained by false or inaccurate information and action to remedy the situation is not immediately taken by the client;
- (d) if the circumstances set out in Regulation 67 of the Civil Legal Aid (General) Regulations 1989 arise at a time when it is impracticable for the Area Committee to meet in time to prevent an abuse of the Legal Aid Fund;
- (e) if the client refuses to authorise them to make some disclosure to the court which their duty to the court requires them to make;
- (f) if having become aware during the course of a case of the existence of a document which should have been but has not been disclosed on discovery the client fails forthwith to disclose it;
- (g) if having come into possession of a document belonging to another party by some means other than the normal and proper channels and having read it before they realise that it ought to have been returned unread to the person entitled to possession of it they would thereby be embarrassed in the discharge of their duties by their knowledge of the contents of the document provided that they may retire or withdraw only if they can do so without jeopardising the client's interests.

### 5.2 Advocates may withdraw from a case where they are satisfied that:

- (a) the brief has been withdrawn or their retainer terminated;
- (b) their professional conduct is being impugned; or
- (c) there is some other substantial reason for so doing.

### 5.3 Advocates must not:

- (a) cease to act or return a brief without having first explained to their client their reasons for doing so:

- (b) return a brief to another advocate without the consent of the client;
- (c) return a brief which they have accepted and for which a fixed date has been obtained or (except with the consent of the client and where appropriate the court) break any other professional engagement so as to enable them to attend a social or non-professional engagement;
- (d) save as provided above return any brief or withdraw from a case in such a way or in such circumstances that their client may be unable to find other legal assistance in time to prevent prejudice being suffered by the client.

## **PART VI – Conduct of work: the client**

### 6.1 Advocates:

- (a) must in all their professional activities be courteous and act promptly, conscientiously, diligently and with reasonable competence and take all reasonable and practicable steps to avoid unnecessary expense or waste of the court's time and to ensure that professional engagements are fulfilled;
- (b) must not undertake any task which:
  - (i) they know or ought to know they are not competent to handle;
  - (ii) they do not have adequate time and opportunity to prepare for or perform; or
  - (iii) they cannot discharge within a reasonable time having regard to the pressure of other work;
- (c) must read all briefs delivered to them expeditiously;
- (d) must have regard to any relevant written standards adopted by the Law Society for the conduct of professional work;
- (e) must inform the client forthwith:
  - (i) if it becomes apparent that they will not be able to do the work within a reasonable time after receipt of instructions;
  - (ii) if there is an appreciable risk that they may not be able to undertake a brief or fulfil any other professional engagement which they have accepted.

6.2 Whether or not the relation of advocate and client continues, advocates must preserve the confidentiality of their clients' affairs and must not without the prior consent of the client or as permitted by law lend or reveal the contents of the papers in any brief to or communicate to any third person (other than an associate or any of the staff in their practice who need to know it for the performance of their duties) information which has been entrusted to them in confidence or use such information to their clients' detriment or to their own or another client's advantage.

6.3 Advocates must not in relation to any current matter in which they are or have been briefed offer their personal views or opinions to or in any news or current affairs media upon the facts of or the issues arising in that matter.

- 6.4 Advocates who form the view that there is a conflict of interest between their lay client and their professional client must advise that it would be in the lay client's interest to instruct another professional adviser and such advice must be given either in writing or at a conference at which both the professional client and the lay client are present.
- 6.5 Advocates must not when interviewing a witness out of court:
- (a) place witnesses who are being interviewed under any pressure to provide other than a truthful account of their evidence;
  - (b) rehearse, practise or coach witnesses in relation to their evidence or the way in which they should give it.
- 6.6 Advocates must not devise facts which will assist in advancing their client's case and must not draft any originating process, pleading, affidavit, witness statement or notice of appeal containing:
- (a) any statement of fact or contention (as the case may be) which is not supported by the client or by their brief or instructions;
  - (b) any contention which they do not consider to be properly arguable;
  - (c) any allegation of fraud unless they have clear instructions to make such allegation and have before them reasonably credible material which as it stands establishes a prima facie case of fraud;
  - (d) in the case of an affidavit or witness statement any statement of fact other than the evidence which in substance according to their instructions the advocate reasonably believes the witness would give if the evidence contained in the affidavit or witness statement were being given viva voce;

provided that nothing in this paragraph shall prevent an advocate drafting a pleading, affidavit or witness statement containing specific facts, matters or contentions included by the advocate subject to the client's confirmation as to their accuracy.

## **PART VII – Conduct of work: the court**

- 7.1 Advocates when conducting proceedings at court:
- (a) are personally responsible for the conduct and presentation of their case and must exercise personal judgment upon the substance and purpose of statements made and questions asked;
  - (b) must not unless invited to do so by the court or when appearing before a tribunal where it is their duty to do so assert a personal opinion on the facts or the law;
  - (c) must ensure that the court is informed of all relevant decisions and legislative provisions of which they are aware whether the effect is favourable or unfavourable towards the contention for which they argue and must bring any procedural irregularity to the attention of the court during the hearing and not reserve such matter to be raised on appeal;
  - (d) must not adduce evidence obtained otherwise than from or through their client or devise facts which will assist in advancing their client's case;

- (e) must not make statements or ask questions which are merely scandalous or intended or calculated only to vilify, insult or annoy either a witness or some other person;
- (f) must if possible avoid the naming in open court of third parties whose character would thereby be impugned;
- (g) must not by assertion in a speech impugn a witness whom they have had an opportunity to cross-examine unless in cross-examination they have given the witness an opportunity to answer the allegation;
- (h) must not suggest that a witness or other person is guilty of crime, fraud or misconduct or attribute to another person the crime or conduct of which their client is accused unless such allegations go to a matter in issue (including the credibility of the witness) which is material to their client's case and which appear to them to be supported by reasonable grounds.

## **PART VIII – Communications with clients**

- 8.1 Advocates must have proper lines of communications. When instructed by a litigator they are normally entitled to rely on the litigator to communicate with the client. When instructed direct by a representative of the client who is not a litigator, they should ensure that the representative is properly authorised.
- 8.2 Where there is any reason to doubt the propriety of any action or proposed course of action, advocates should satisfy themselves that the client has received and understood any warnings or advice which it may be appropriate to offer. Where the client is a public or corporate body, this duty may include ensuring that the council, the board of directors, the governing body or others in positions of like authority have received the warnings or advice and that consequent instructions have their approval.

# Solicitors' Anti-Discrimination Rules 2004

Professional Ethics

26 April 2004

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# Solicitors' Anti-Discrimination Rules 2004

26 April 2004

*Rule dated 26 April 2004 made by the Council of the Law Society, under section 31 of the Solicitors Act 1974 and section 9 of the Administration of Justice Act 1985, with the concurrence of the Master of the Rolls under the latter section, regulating the professional conduct of solicitors, registered European lawyers, registered foreign lawyers and recognised bodies in England and Wales.*

## Rule 1 – Duty not to discriminate

Solicitors must comply with all anti-discrimination legislation from time to time in force and must, at all times, in their professional dealings with staff, partners, other solicitors, barristers, clients or third parties:

- (a) not discriminate against any person, directly or indirectly, nor victimise or harass them on the grounds of their sex (including their marital status); on racial grounds; or on grounds of their racial group; ethnic or national origins; colour; nationality; religion or belief; or sexual orientation;
- (b) not discriminate against any person on grounds of disability except where, in relation to legislation, there is a specific exception or limitation preventing such discrimination from being unlawful.

## Rule 2 – Burden of proof

Where there has been a finding by an Employment Tribunal, or a County Court or (in Scotland) Sheriff Court or other relevant court or tribunal that a solicitor has committed, or is to be treated as having committed, an unlawful act of discrimination (including victimisation) or harassment then, where that solicitor is a party to the action in question, this shall be treated as prima facie evidence of that fact when determining whether that solicitor has committed an act of discrimination (including victimisation) or harassment in breach of these rules.

## Rule 3 – Need for policy

- (a) Principal solicitors in private practice must adopt and implement an appropriate policy for dealing with the avoidance of discrimination and the promotion of equality and diversity within their practice.
- (b) To be appropriate the policy adopted must include, as a minimum, all of the provisions which appear in the Law Society model policy and any additional provisions should not conflict with those provisions.

## **Rule 4 – Failure to adopt own or Law Society model policy**

Those principal solicitors in private practice who have not adopted and implemented their own policy dealing with discrimination and equal opportunity will in any event be bound by the provisions of the Law Society model policy in effect at that time.

## **Rule 5 – Solicitors in employed practice**

Solicitors with management responsibilities in employed practice must use all reasonable endeavours to secure the operation of a policy for dealing with the avoidance of discrimination and the promotion of equal opportunity within their department.

## **Rule 6 – Applicable anti-discrimination legislation**

Reference in these rules to anti-discrimination legislation means such legislation as is in force at the relevant time, including any amendments, and includes:

- (i) the Equal Pay Act 1970,
- (ii) the Sex Discrimination Act 1975,
- (iii) the Race Relations Act 1976,
- (iv) the Disability Discrimination Act 1995,
- (v) the Employment Rights Act 1996,
- (vi) the Employment Equality (Sexual Orientation) Regulations 2003,
- (vi) the Employment Equality (Religion or Belief) Regulations 2003, and
- (vii) such further anti-discrimination legislation as may from time to time be enacted and brought into force in England and Wales.

## **Rule 7 – Applicability to other legal advisers**

- (a) Rules 1 and 2 apply to a registered European lawyer, or to a registered foreign lawyer practising in partnership with a solicitor or registered European lawyer or as a director of a recognised body which is a company or as a member of a recognised body which is a limited liability partnership, or to a recognised body, as they apply to a solicitor.
- (b) Rules 3 and 4 apply to a registered European lawyer who is a principal in private practice, or to a registered foreign lawyer practising in partnership with a solicitor or registered European lawyer, or to a recognised body, as they apply to a principal solicitor in private practice.

Rule 5 applies to a registered European lawyer as it applies to a solicitor.

## **Rule 8 – Replacement of previous rule and code**

These rules replace the Solicitors' Anti-Discrimination Rule 1995 and the Solicitors' Anti-Discrimination Code.

# The Law Society's model anti-discrimination policy

Professional Ethics

1 September 2004

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# The Law Society's model anti-discrimination policy

1 September 2004

*Policy issued under rules 3 and 4 of the Solicitors' Anti-Discrimination Rules 2004*

## A. The firm's commitment

### (1) General commitment

This firm is committed to eliminating discrimination and promoting equality and diversity in its own policies, practices and procedures and in those areas in which it has influence.

This applies to the firm's professional dealings with staff and [partners]/[members]/[directors], other solicitors, barristers, clients and third parties.

The firm intends to treat everyone equally and with same attention, courtesy and respect regardless of their disability, gender, marital status, race, racial group, colour, ethnic or national origin, nationality, religion or belief or sexual orientation.

### (2) Regulation and legislation

In developing and implementing its anti-discrimination policy, the firm is committed to complying with the Solicitors' Anti-Discrimination Rules 2004 and with all current and any future anti-discrimination legislation and associated codes of practice including, but not limited to:

- (a) the Equal Pay Act 1970,
- (b) the Sex Discrimination Act 1975,
- (c) the Race Relations Act 1976,
- (d) the Disability Discrimination Act 1995,
- (e) the Employment Rights Act 1996,
- (f) the Employment Equality (Sexual Orientation) Regulations 2003,
- (g) the Employment Equality (Religion or Belief) Regulations 2003,

and any relevant amendments or re-enactments of such legislation;

- i. the Commission for Racial Equality code of practice for the elimination of racial discrimination and the promotion of equality of opportunity in employment (1983),
- ii. the Equal Opportunities Commission code of practice on sex discrimination; equal opportunities policies, procedures and practices in employment (1985),

- iii. the Equal Opportunities Commission code of practice on equal pay (2003),
- iv. the Disability Discrimination Act 1995 codes of practice in relation to rights of access to facilities, services and premises in employment,
- v. the European Community code of practice on the protection of the dignity of men and women at work,

and any relevant amendments to such codes or further codes of practice.

## B. Forms of discrimination

The following are the kinds of discrimination, which are against the firm's policy:

- (a) **Direct discrimination**, where a person is treated less favourably on the grounds of race, racial group, colour, ethnic or national origins, sex, pregnancy, marital status, disability or sexual orientation or religion or belief.
- (b) **Indirect discrimination**, where an apparently neutral provision, criterion or practice would put a substantially higher proportion of the members of one sex, or persons having a racial or ethnic origin, or a particular religion or belief, or a particular disability or a particular sexual orientation at a particular disadvantage compared with other persons unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.
- (c) **Victimisation**, where someone is treated less favourably than others because he or she has taken action against the firm under one of the relevant Acts.
- (d) **Harassment**, when unwanted conduct related to any of the grounds referred to above takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment. Harassment may involve physical acts or verbal and non-verbal communications and gestures. This will include physical, verbal and non-verbal acts.

## C. Employment and Training

### (1) General Statement

As an employer, the firm will treat all employees and job applicants equally and fairly and not discriminate unjustifiably against them. This will, for example, include arrangements for recruitment and selection, terms and conditions of employment, access to training opportunities, access to promotion and transfers, grievance and disciplinary processes, demotions, selection for redundancies, dress code, references, bonus schemes, work allocation and any other employment related activities.

### (2) Recruitment and selection

This firm recognises the benefits of having a diverse workforce and will take steps to ensure that:

- (a) it endeavours to recruit from the widest pool of qualified candidates possible;
- (b) employment opportunities are open and accessible to all on the basis of their individual qualities and personal merit;
- (c) where appropriate, positive action measures are taken to attract applications from all sections of society and especially from those groups which are under-represented in the workforce;
- (d) selection criteria and processes do not discriminate unjustifiably on the grounds of disability; gender; marital status; race; racial group; colour; ethnic or national origin; nationality; religion or belief; or sexual orientation; other than in those instances where the firm is exercising permitted positive action;
- (e) wherever appropriate and necessary, lawful exemptions (genuine occupational requirements) will be used to recruit suitable staff to meet the special needs of particular groups;
- (f) all recruitment agencies acting for the firm are aware of its requirement not to discriminate and to act accordingly.

### **(3) Targets**

The firm will use its best endeavours to comply with Law Society policies and targets for the employment of ethnic minorities, as are produced from time to time in accordance with the provisions of the anti-discrimination legislation.

### **(4) Conditions of service**

The firm will treat all employees equally and create a working environment which is free from discrimination and harassment and which respects, where appropriate, the diverse backgrounds and beliefs of employees.

Terms and conditions of service for employees will comply with anti-discrimination legislation. The provision of benefits such as working hours, maternity and other leave arrangements, performance appraisal systems, dress code, bonus schemes and any other conditions of employment will not discriminate against any employee on the grounds of their gender; marital status; race; racial group; colour; ethnic or national origin; nationality; religion or belief; or sexual orientation; or unreasonably on the grounds of their disability.

Where appropriate and necessary, the firm will endeavour to provide appropriate facilities and conditions of service which take into account the specific needs of employees which arise from their ethnic or cultural background; gender; responsibilities as carers; disability; religion or belief; or sexual orientation.

### **(5) Promotion and career development**

Promotion within the firm (including to [partners]/[members]/[directors]) will be made without reference to any of the forbidden grounds and will be based solely on merit.

The selection criteria and processes for recruitment and promotion will be kept under review to ensure that there is no unjustifiably discriminatory impact on any particular group.

Whilst positive action measures may be taken in accordance with the relevant anti-discrimination legislation to encourage under-represented groups to apply for promotion opportunities, recruitment or promotion to all jobs will be based solely on merit.

All employees will have equal access to training and other career development opportunities appropriate to their experience and abilities. However, the firm will take appropriate positive action measures (as permitted by the anti-discrimination legislation) to provide special training and support for groups which are under-represented in the workforce and encourage them to take up training and career development opportunities.

## **C. [Partners]/[members]/[directors]**

Arrangements and procedures for selecting [partners]/[members]/[directors], their terms and conditions of [partnership]/[membership]/[directorship], access to benefits, facilities or services and termination arrangements will be reviewed and amended where necessary to prevent discrimination on any of the forbidden grounds.

Maternity rights available to [partners]/[members]/[directors] shall be no less favourable than those required by legislation for employees.

## **D. Barristers and third parties**

### **(1) Barristers**

Barristers should be instructed on the basis of their skills, experience and ability. The firm will not, on any of the forbidden grounds, avoid briefing a barrister and will not request barristers' clerks to do so.

Clients' requests for a named barrister should be complied with, subject to the firm's duty to discuss with the client the suitability of the barrister and to advise appropriately.

The firm will discuss with the client any request by the client that only a barrister who is not disabled or who is of a particular gender; marital status; race; racial group; colour; ethnic or national origin; nationality; religion or belief; or sexual orientation be instructed. In the absence of a valid reason for this request, which must be within the exemptions permitted by the anti-discrimination legislation, the firm will endeavour to persuade the client to modify their instructions in so far as they are given on discriminatory grounds. Should the client refuse to modify such instructions, the firm will cease to act.

### **(2) Suppliers**

All lists of approved suppliers and databases of contractors, agents and other third parties who, or which, are regarded as suitable to be instructed by those within the firm have been compiled only on the basis of the ability of those persons or organisations to undertake work of a particular type and contain no discriminatory exclusion, restriction or preference.

## **E. Clients**

The firm is generally free to decide whether to accept instructions from any particular client, but any refusal to act will not be based upon any of the forbidden grounds.

The firm will take steps to meet the different needs of particular clients arising from its obligations under the anti-discrimination legislation (such as the Disability Discrimination Act) and the Solicitors' Anti-Discrimination Rules 2004.

In addition, where necessary and where it is permitted by the relevant anti-discrimination legislation (for example, provisions relating to positive action or exemptions) the firm will seek to provide services which meet the specific needs and requests arising from clients' ethnic or cultural background; gender; responsibilities as carers; disability; religion or belief; sexual orientation or other relevant factors.

## **F. Promoting Equality and Diversity**

This firm is committed to promoting equality and diversity in the firm as well as in those areas in which it has influence.

Employees and [partners]/[members]/[directors] will be informed of this anti-discrimination policy and will be provided with equality and diversity training appropriate to their needs and responsibilities.

All those who act on the firm's behalf will be informed of this anti-discrimination policy and will be expected to pay due regard to it when conducting business on the firm's behalf.

In all its dealings, including those with suppliers, contractors and recruitment agencies, the firm will seek to promote the principles of equality and diversity.

The firm will make every effort to reflect its commitment to equality and diversity in its marketing and communication activities.

## **G. Implementing the policy**

### **(1) Responsibility**

Ultimate responsibility for implementing the policy rests with the [principal]/[partners]/[members]/[directors] of the firm. The firm will appoint a senior person within it to be responsible for the operation of the policy.

All employees and [partners]/[members]/[directors] of the firm are expected to pay due regard to the provisions of its anti-discrimination policy and are responsible for ensuring compliance with it when undertaking their jobs or representing the firm.

Acts of discrimination or harassment on any of the forbidden grounds by employees or [partners]/[members]/[directors] of the firm will result in disciplinary action. Failure to comply with this policy will be treated in a similar fashion. The policy applies to all who are employed in the firm and to all [partners]/[members]/[directors].

Acts of discrimination or harassment on any of the forbidden grounds by those acting on behalf of the firm will lead to appropriate action including termination of services where appropriate.

## **(2) Complaints of discrimination**

The firm will treat seriously, and will take action where appropriate concerning, all complaints of discrimination or harassment on any of the forbidden grounds made by employees, [partners]/[members]/[directors], clients, barristers or other third parties.

All complaints will be investigated in accordance with the firm's grievance or complaints procedure and the complainant will be informed of the outcome.

## **(3) Monitoring and review**

The policy will be monitored and reviewed in a manner proportionate to the size and nature of the firm on a regular basis (and in any event at least annually) to measure its progress and judge its effectiveness. In particular, the firm will, as appropriate, monitor and record:

- (a) The gender and ethnic composition of the workforce and [partners]/[members]/[directors] as well as the number of disabled staff, [partners]/[members]/[directors] at different levels of the organisation.
- (b) The ethnicity, gender and disability of all applicants, short-listed applicants and successful applicants for jobs and training contract.
- (c) The ethnicity, gender and disability of all applicants for promotion (including to partnership, to the role of a member of a limited liability partnership or director of a company) and training opportunities and details of whether they were successful.
- (d) Where it is possible to do so, and where doing so will not cause offence or discomfort to those whom it is intended to protect, the sexual orientation and religion or belief of all [partners]/[members]/[directors] and staff will be monitored so as to ensure that they are not being discriminated against in terms of the opportunities or benefits available to them. Firms should, however, be aware that [partners]/[members]/[directors] and staff may not choose to disclose their sexual orientation or religion or belief and that care should be taken to avoid inadvertent discrimination in such cases.
- (e) The number and outcome of complaints of discrimination made by staff, [partners]/[members]/[directors], barristers, clients and other third parties.
- (f) The disciplinary action (if any) taken against employees by race, gender and disability.

This information will be used to review the progress and impact of the anti-discrimination policy. Any changes required will be made and implemented.

1 September 2004

## Annex A: Former version of rule 13, Solicitors' Practice Rules 1990

### **Solicitors Regulation Authority note:**

*The former version of rule 13 of the Solicitors' Practice Rules 1990 (supervision and management of an office) was repealed on 23 December 1999, save for the purpose of the transitional provisions set out in note (k) to the new version of rule 13 (supervision and management of a practice), which states:*

*"For a period of 10 years from 23rd December 1999:*

- (i) a solicitor of the Supreme Court, registered European lawyer or registered foreign lawyer who would not satisfy the requirements for a solicitor qualified to supervise can nevertheless fulfil that role for the purpose of paragraph (2) of the rule or note (k)(ii)(C) below, provided that:
  - (A) immediately before 12th December 1996 he or she was qualified to supervise an office under Practice Rule 13(1)(a) as it then stood, or any waiver of that rule; and*
  - (B) any requirements of that rule or of any waiver continue to be met;**
- (ii) a person who would not satisfy the requirements for a solicitor qualified to supervise can nevertheless fulfil that role for the purpose of paragraph (3) of the rule, provided that:
  - (A) immediately before 12th December 1996 he or she was managing or employed to manage an office in compliance with Practice Rule 13(1)(b) as it then stood, or any waiver of that rule; and*
  - (B) any requirements of that rule or of any waiver continue to be met; and*
  - (C) the office is attended on a daily basis by a solicitor qualified to supervise."**

*The former version of rule 13 is set out below.]*

### **Rule 13 (Supervision and management of an office)**

(1) Solicitors shall ensure that every office where they or their firms practise is and can reasonably be seen to be properly supervised in accordance with the following minimum standards:

- (a) Every such office shall be attended on each day when it is open to the public or open to telephone calls from the public by:
  - (i) a solicitor who holds a practising certificate and has been admitted for at least three years; or
  - (ii) in the case of an office from which no right of audience or right to conduct litigation is exercised and from which no exercise of any such right is supervised, a registered foreign lawyer who is a principal of the firm and who has been qualified in his or her own jurisdiction for at least three years;

who shall spend sufficient time at such office to ensure adequate control of the staff employed there and afford requisite facilities for consultation with clients. In the case of a firm in private practice such solicitor may be a principal, employee or consultant of the firm, provided that the firm must have at least one principal who is a solicitor who has been admitted for at least three years, or alternatively, in the case of a firm none of whose principals exercise any right of audience or right to conduct litigation or supervise or assume responsibility for the exercise of any such right, a registered foreign lawyer who has been qualified in his or her own jurisdiction for at least three years.

- (b) Every such office shall be managed by one of the persons listed below who shall normally be in attendance at that office during all the hours when it is open to the public or open to telephone calls from the public:
  - (i) a solicitor holding a current practising certificate;
  - (ii) a Fellow of the Institute of Legal Executives confirmed by the Institute as being of good standing and having been admitted as a Fellow for not less than three years;
  - (iia) in the case of an office from which no right of audience or right to conduct litigation is exercised and from which no exercise of any such right is supervised, a registered foreign lawyer who is a principal of the firm;
  - (iii) in the case of an office dealing solely with conveyancing, a licensed conveyancer; or
  - (iv) in the case of an office dealing solely with property selling and surveying, a chartered surveyor or person holding another professional qualification approved by the Council under Rule 14 of these rules.

(2) In determining whether or not there has been compliance with the requirement as to supervision in paragraph (1) of this rule, account shall be taken of, inter alia, the arrangements for principals to see incoming mail.

(3) Where daily attendance or normal attendance in accordance with sub-paragraphs (1)(a) or (1)(b) of this rule is prevented by illness, accident or other sufficient or unforeseen cause for a prolonged period, suitable alternative arrangements shall be made without delay to ensure compliance.

(4) [transitional provision expired before 11 December 1996]

(5) In this rule:

- (a) references to a principal shall be construed, in relation to a recognised body, as references to a director of that body;
- (b) in paragraph (2) of this rule, "principals" shall be construed, except in relation to a firm none of whose principals exercise any right of audience or right to conduct litigation or supervise or assume responsibility for the exercise of any such right, as referring to principals who are solicitors; and
- (c) "right of audience" and "right to conduct litigation" shall be construed in accordance with Part II and section 119 of the Courts and Legal Services

## Annex B: The CCBE's Code of Conduct for European Lawyers (relevant extracts)

### **Solicitors Regulation Authority note:**

*The CCBE is the Council of Bars and Law Societies of Europe.*

*Rule 16 of the Solicitors' Practice Rules 1990 and rule 4 of the Solicitors' Overseas Practice Rules 1990 require solicitors, in their European cross-border activities, to observe the rules codified in the CCBE's Code of Conduct for European Lawyers.*

*The rules and principles of conduct which apply to practice as a solicitor, either from an office in England and Wales or from an office outside England and Wales, mirror all but six of the requirements of the CCBE Code as interpreted by the CCBE's explanatory memorandum. Consequently, solicitors really need to consider only those six requirements in any detail.*

*Note (iii) to rule 16 of the Solicitors' Practice Rules 1990 and explanatory note (iii) to rule 4 of the Solicitors' Overseas Practice Rules specify the six provisions in the CCBE Code which solicitors must observe in their European cross-border activities over and above the rules and principles normally applicable to solicitors.*

*The extracts below are from the code and explanatory memorandum as revised by the CCBE on 19 May 2006.*

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# Annex B: CCBE Code of Conduct (relevant extracts)

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## 1. Preamble

### 1.4. Field of Application *Ratione Personae*

This Code shall apply to lawyers as they are defined by Directive 77/249/EEC and by Directive 98/5/EC and to lawyers of the Observer Members of the CCBE.

#### **Commentary on Article 1.4**

The rules are stated to apply to all lawyers as defined in the Lawyers Services Directive of 1977 and the Lawyers Establishment Directive of 1998, and lawyers of the Observer Members of the CCBE. This includes lawyers of the states which subsequently acceded to the Directives, whose names have been added by amendment to the Directives. The Code accordingly applies to all the lawyers represented on the CCBE, whether as full Members or as Observer Members, namely:

Austria	Rechtsanwalt
Belgium	avocat/advocaat/Rechtsanwalt
Bulgaria	advokat
Croatia	odvjetnik
Cyprus	dikegóros
Czech Republic	advokát
Denmark	advokat
Estonia	vandeadvokaat
Finland	asianajaja/advokat
FYRO Macedonia	advokat
France	avocat
Germany	Rechtsanwalt
Greece	dikegóros
Hungary	ügyvéd
Iceland	lögmaður
Ireland	barrister; solicitor
Italy	avvocato
Latvia	zvērīnāts advokāts
Liechtenstein	Rechtsanwalt
Lithuania	advokatas
Luxembourg	avocat/Rechtsanwalt
Malta	avukat; prokuratur legali
Montenegro	advokat

Netherlands	advocaat
Norway	advokat
Poland	adwokat; radca prawny
Portugal	advogado
Romania	avocat
Serbia	advokat
Slovakia	advokát/advokátka
Slovenia	odvetnik/odvetnica
Spain	abogado/advocat/abokatu/avogado
Sweden	advokat
Switzerland	Rechtsanwalt/Anwalt/Fürsprech/ Fürsprecher/avocat/avvocato/advokat
Turkey	avukat
Ukraine	advokat
United Kingdom	advocate/barrister; solicitor

It is also hoped that the Code will be acceptable to the legal professions of other non-member states in Europe and elsewhere so that it could also be applied by appropriate conventions between them and the Member States.

### **1.5. Field of Application *Ratione Materiae***

Without prejudice to the pursuit of a progressive harmonisation of rules of deontology or professional practice which apply only internally within a Member State, the following rules shall apply to the cross-border activities of the lawyer within the European Union and the European Economic Area. Cross-border activities shall mean:

- (a) all professional contacts with lawyers of Member States other than the lawyer's own; and
- (b) the professional activities of the lawyer in a Member State other than his or her own, whether or not the lawyer is physically present in that Member State.

#### ***Commentary on Article 1.5***

The rules are here given direct application only to "cross-border activities", as defined, of lawyers within the EU and the EEA and lawyers of the Observer Members of the CCBE - see above on Article 1.4, and the definition of "Member State" in Article 1.6. (See also above as to possible extensions in the future to lawyers of other states.) The definition of cross-border activities would, for example, include contacts in state A even on a matter of law internal to state A between a lawyer of state A and a lawyer of state B; it would exclude contacts between lawyers of state A in state A of a matter arising in state B, provided that none of their professional activities takes place in state B; it would include any activities of lawyers of state A in state B, even if only in the form of communications sent from state A to state B.

## 1.6. Definitions

In this Code:

"Member State" means a member state of the European Union or any other state whose legal profession is included in Article 1.4.

"Home Member State" means the Member State where the lawyer acquired the right to bear his or her professional title.

"Host Member State" means any other Member State where the lawyer carries on cross-border activities.

"Competent Authority" means the professional organisation(s) or authority(ies) of the Member State concerned responsible for the laying down of rules of professional conduct and the administration of discipline of lawyers.

"Directive 77/249/EEC" means Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services.

"Directive 98/5/EC" means Directive 98/5/EC of the European Parliament and of the Council of 16 February 1988 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained.

### ***Commentary on Article 1.6***

This provision defines a number of terms used in the Code, "Member State", "Home Member State", "Host Member State", "Competent Authority", "Directive 77/249/EEC" and "Directive 98/5/EC".

The reference "where the lawyer carries on cross-border activities" should be interpreted in the light of the definition of "cross-border activities" in Article 1.5.

## 2. General Principles

### 2.5. Incompatible Occupations

- 2.5.1. In order to perform his or her functions with due independence and in a manner which is consistent with his or her duty to participate in the administration of justice a lawyer may be prohibited from undertaking certain occupations.
- 2.5.2. A lawyer who acts in the representation or the defence of a client in legal proceedings or before any public authorities in a Host Member State shall there observe the rules regarding incompatible occupations as they are applied to lawyers of the Host Member State.
- 2.5.3. A lawyer established in a Host Member State in which he or she wishes to participate directly in commercial or other activities not connected with the practice of the law shall respect the rules regarding forbidden or incompatible occupations as they are applied to lawyers of that Member State.

### ***Commentary on Article 2.5***

There are differences both between and within Member States on the extent to which lawyers are permitted to engage in other occupations, for example in commercial activities. The general purpose of rules excluding a lawyer from other occupations is to protect the lawyer from influences which might impair the lawyer's independence or his or her role in the administration of justice. The variations in these rules reflect different local conditions, different perceptions of the proper function of lawyers and different techniques of rule-making. For instance in some cases there is a complete prohibition of engagement in certain named occupations, whereas in other cases engagement in other occupations is generally permitted, subject to observance of specific safeguards for the lawyer's independence.

Articles 2.5.2 and 3 make provision for different circumstances in which a lawyer of one Member State is engaging in cross-border activities (as defined in Article 1.5) in a Host Member State when he or she is not a member of the Host State legal profession.

Article 2.5.2 imposes full observation of Host State rules regarding incompatible occupations on the lawyer acting in national legal proceedings or before national public authorities in the Host State. This applies whether the lawyer is established in the Host State or not.

Article 2.5.3, on the other hand, imposes “respect” for the rules of the Host State regarding forbidden or incompatible occupations in other cases, but only where the lawyer who is established in the Host Member State wishes to participate directly in commercial or other activities not connected with the practice of the law.

## **3. Relations with Clients**

### **3.6. Fee Sharing with Non-Lawyers**

- 3.6.1. A lawyer may not share his or her fees with a person who is not a lawyer except where an association between the lawyer and the other person is permitted by the laws and the professional rules to which the lawyer is subject.
- 3.6.2. The provisions of 3.6.1 above shall not preclude a lawyer from paying a fee, commission or other compensation to a deceased lawyer's heirs or to a retired lawyer in respect of taking over the deceased or retired lawyer's practice.

### ***Commentary on Article 3.6***

In some Member States lawyers are permitted to practise in association with members of certain other approved professions, whether legal professions or not. The provisions of Article 3.6.1 are not designed to prevent fee-sharing within such an approved form of association. Nor are the provisions designed to prevent fee-sharing by the lawyers to whom the Code applies (see on Article 1.4 above) with other “lawyers”, for example lawyers from non-Member States or members of other legal professions in the Member States such as notaries.

## 5. Relations between Lawyers

### 5.2. Co-operation among Lawyers of Different Member States

- 5.2.1. It is the duty of a lawyer who is approached by a colleague from another Member State not to accept instructions in a matter which the lawyer is not competent to undertake. The lawyer should in such case be prepared to help that colleague to obtain the information necessary to enable him or her to instruct a lawyer who is capable of providing the service asked for.
- 5.2.2. Where a lawyer of a Member State co-operates with a lawyer from another Member State, both have a general duty to take into account the differences which may exist between their respective legal systems and the professional organisations, competences and obligations of lawyers in the Member States concerned.

#### ***Commentary on Article 5.2***

This provision also develops a principle stated in the Declaration of Perugia with a view to avoiding misunderstandings in dealings between lawyers of different Member States.

### 5.3. Correspondence between Lawyers

- 5.3.1. If a lawyer intends to send communications to a lawyer in another Member State, which the sender wishes to remain confidential or without prejudice he or she should clearly express this intention prior to communicating the documents.
- 5.3.2. If the prospective recipient of the communications is unable to ensure their status as confidential or without prejudice he or she should inform the sender accordingly without delay.

#### ***Commentary on Article 5.3***

In certain Member States communications between lawyers (written or by word of mouth) are normally regarded as to be kept confidential as between the lawyers. This means that the content of these communications cannot be disclosed to others, cannot normally be passed to the lawyers' clients, and at any event cannot be produced in court. In other Member States, such consequences will not follow unless the correspondence is marked as "confidential".

In yet other Member States, the lawyer has to keep the client fully informed of all relevant communications from a professional colleague acting for another party, and marking a letter as "confidential" only means that it is a legal matter intended for the recipient lawyer and his or her client, and not to be misused by third parties.

In some states, if a lawyer wishes to indicate that a letter is sent in an attempt to settle a dispute, and is not to be produced in a court, the lawyer should mark the letter as "without prejudice".

These important national differences give rise to many misunderstandings. That is why lawyers must be very careful in conducting cross-border correspondence.

Whenever a lawyer wants to send a letter to a professional colleague in another Member State on the basis that it is to be kept confidential as between the lawyers, or that it is "without prejudice", the lawyer should ask in advance whether the letter

can be accepted on that basis. A lawyer wishing that a communication should be accepted on such a basis must express that clearly at the head of the communication or in a covering letter.

A lawyer who is the intended recipient of such a communication, but who is not in a position to respect, or to ensure respect for, the basis on which it is to be sent, must inform the sender immediately so that the communication is not sent. If the communication has already been received, the recipient must return it to the sender without revealing its contents or referring to it in any way; if the recipient's national law or rules prevent the recipient from complying with this requirement, he or she must inform the sender immediately.

#### **5.4. Referral Fees**

- 5.4.1. A lawyer may not demand or accept from another lawyer or any other person a fee, commission or any other compensation for referring or recommending the lawyer to a client.
- 5.4.2. A lawyer may not pay anyone a fee, commission or any other compensation as a consideration for referring a client to him- or herself.

#### ***Commentary on Article 5.4***

This provision reflects the principle that a lawyer should not pay or receive payment purely for the reference of a client, which would risk impairing the client's free choice of lawyer or the client's interest in being referred to the best available service. It does not prevent fee-sharing arrangements between lawyers on a proper basis (see also Article 3.6 above).

In some Member States lawyers are permitted to accept and retain commissions in certain cases provided the client's best interests are served, there is full disclosure to the client and the client has consented to the retention of the commission. In such cases the retention of the commission by the lawyer represents part of the lawyer's remuneration for the service provided to the client and is not within the scope of the prohibition on referral fees which is designed to prevent lawyers making a secret profit.

#### **5.9. Disputes amongst Lawyers in Different Member States**

- 5.9.1. If a lawyer considers that a colleague in another Member State has acted in breach of a rule of professional conduct the lawyer shall draw the matter to the attention of that colleague.
- 5.9.2. If any personal dispute of a professional nature arises amongst lawyers in different Member States they should if possible first try to settle it in a friendly way.
- 5.9.3. A lawyer shall not commence any form of proceedings against a colleague in another Member State on matters referred to in 5.9.1 or 5.9.2 above without first informing the Bars or Law Societies to which they both belong for the purpose of allowing both Bars or Law Societies concerned an opportunity to assist in reaching a settlement.

### ***Commentary on Article 5.9***

A lawyer has the right to pursue any legal or other remedy to which he or she is entitled against a colleague in another Member State. Nevertheless it is desirable that, where a breach of a rule of professional conduct or a dispute of a professional nature is involved, the possibilities of a friendly settlement should be exhausted, if necessary with the assistance of the Bars or Law Societies concerned, before such remedies are exercised.