



The Law Society

Disclosure of funding, fee sharing and referral arrangements: important notice for all practitioners

Professional Ethics

Last updated: 10 March 2004

Contents

Introduction	2
Rule 7 (Fee sharing, partnership and corporate practice)	2
Rule 16 (European cross-border activities).....	3
Solicitors' Costs Information and Client Care Code.....	3
Solicitors' Overseas Practice Rules	4
Solicitors' Introduction and Referral Code	5
Guidance on fee sharing, payments for referrals and related issues approved by the Standards Board on 10 March 2004	6
Part I – Status of this guidance	6
Part II – Guidance on practice rule 7(1A) (fee sharing with non-lawyers).....	6
Part III – Guidance on payments for referrals	9
Part IV – Guidance on practice rule 1 (basic principles)	11
Part V – Guidance on paragraph 6A of the Costs Information and Client Care Code (disclosure of arrangements with third parties)	13

Introduction

All practitioners will need to be aware of conduct provisions on disclosure. These require you to tell your client about any relationship which you have with a third party (eg, a funder, fee sharer or introducer) which affects the steps which you can take on the client's behalf. The disclosure requirements arise out of your fiduciary duties. They apply generally; not just when you make a payment to the third party.

The Law Society's Council has liberalised the rules concerning fee sharing and payments for referrals by solicitors subject to various conditions and safeguards. The new provisions also clarify a solicitor's duty to disclose information to clients, even if there is no fee sharing or payment for a referral. The new rules came into force in March 2004. Key parts of the new rules are set out below. These are followed by guidance on the new rules issued by the Standards Board on 10 March 2004 to assist with interpretation.

Your attention is drawn to paragraph (3) of the Solicitors' Introduction and Referral Code 1990 which states:

'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.'

The various safeguards in the new provisions are there to ensure that clients' interests are properly protected. Should a client's interests be compromised through non-compliance, this will raise issues of conduct. Practitioners are reminded that the disciplinary consequences of misconduct can be severe. In appropriate cases breaches may result in sanctions such as a condition being placed on a practising certificate, a reprimand, a fine, suspension or striking off the roll of solicitors.

Rule 7 (Fee sharing, partnership and corporate practice)

Rule 7 of the Solicitors' Practice Rules has been amended, primarily by the insertion of a new paragraph (1A) as follows:

(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.'

Rule 16 (European cross-border activities)

Note (iii) to rule 16 of the Solicitors' Practice Rules 1990 has been amended to read as follows:

- '(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); ...'

Solicitors' Costs Information and Client Care Code

Paragraph 2(c) of the Solicitors' Costs Information and Client Care Code 1999 now reads as follows:

- '(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.'

A new paragraph 2(da) has been inserted into the Solicitors' Costs Information and Client Care Code as follows:

- '(da) If appropriate solicitors should also comply with paragraph 6A of the code where a client is legally aided.'

After paragraph 6 of the Solicitors' Costs Information and Client Care Code a new paragraph 6A has been inserted as follows:

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

The new provisions also clarify a solicitor's duty to disclose information to clients even if there is no fee sharing or payment for a referral.

Solicitors' Overseas Practice Rules

The explanatory note (iii) to rule 4 of the Solicitors' Overseas Practice Rules 1990 has been amended to read as follows:

- (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); ...'

Rule 8 of the Solicitors' Overseas Practice Rules has been amended by the insertion of a new paragraph 8(1A) as follows:

- (1A) 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 (2) of this rule; and
 - (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.

'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.'

A new explanatory note (i) has been inserted as follows:

- (i) Because of article 3.6 of the CCBE Code, the exemption in paragraph (1A) of this rule does not apply to a solicitor's 'European cross-border activities' (see rule 4). The following therefore remain prohibited:
- (a) solicitors (wherever practising) sharing fees with a non-lawyer fee sharer situated in an EU state other than the UK, or in Iceland, Liechtenstein, Norway or Switzerland;
 - (b) solicitors practising in an EU state other than the UK, or in Iceland, Liechtenstein, Norway or Switzerland, sharing fees with a non-lawyer fee sharer (wherever situated).

The Law Society has issued guidance on the scope of the exemption.'

Solicitors' Introduction and Referral Code

In Section 2(3) of the Solicitors' Introduction and Referral Code 1990, after the words 'Solicitors must not reward introducers by the payment of commission or otherwise' the words 'except as permitted by Sections 2A and 3A below' have been added.

After Section 2 a new Section 2A has been added as follows:

'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.'

Guidance on fee sharing, payments for referrals and related issues approved by the Standards Board on 10 March 2004

Part I – Status of this guidance

1. This guidance is intended to assist the interpretation of:
 - practice rule 7(1A) (fee sharing with non-lawyers), including the position under the CCBE Code;
 - the Introduction and Referral Code (payments for referrals, in particular section 2A);
 - practice rule 1 (basic principles); and
 - paragraph 6A of the Costs Information and Client Care Code (disclosure of arrangements with third parties).

The guidance does not form part of the rules and is not mandatory, but the Law Society may have regard to it when investigating complaints. Solicitors may need to be able to demonstrate how they have complied with the rules if they have not followed this guidance.

Part II – Guidance on practice rule 7(1A) (fee sharing with non-lawyers)

What is fee sharing?

2. 'Fee sharing' is not defined in practice rule 7. It can have a variety of forms. It includes relationships where a solicitor makes a payment to a third party by reference to a percentage of the fees charged to a client in respect of a particular case. The term also includes payments made by reference to a percentage of a solicitor's gross or net fees, or to a solicitor's profit.

Purpose of relaxing the rule against fee sharing

3. Rule 7 has been partially relaxed so as to give practitioners greater freedom of choice as to the methods available to fund their practices or to pay for services provided to their practices. A well resourced practice is likely to be better able to service its clients. The amended rule allows practitioners to enter into agreements with third party non-lawyers which provide that, in return for the third party making available capital and/or a service to the practitioner, the solicitor makes payment to the third party by reference to a percentage of the solicitor's fees (whether this is limited to the net or gross fees or to any particular case or service).

Solicitors must comply with rules of conduct

4. Solicitors who have fee sharing agreements should take particular care that they comply with all the rules and principles of professional conduct.
5. In particular, solicitors should take account of the requirements of practice rule 1 (basic principles), and most specifically of the requirements of independence and integrity, and of the solicitor's duty to act in the best interests of the client. This means that although a fee sharer may properly require the solicitor, eg to observe certain service delivery standards, it would be improper for the fee sharer to interfere with the solicitor's professional

judgement in relation to the advice given to clients. See also *Part IV – Guidance on practice rule 1 (basic principles)*.

6. There must be compliance with practice rule 3 (introductions and referrals) and the Solicitors' Introduction and Referral Code. This means that if the fee sharing relationship involves referrals to the solicitor by the fee sharer, the solicitor must also have regard to the Code, and to the guidance on payments for referrals (see *Part III – Guidance on payments for referrals*).
7. Solicitors must also comply with practice rule 7(6), which stipulates that solicitors may enter into partnerships only with certain other lawyers. Although fee sharing is an indicator of partnership, it is not the defining feature. Solicitors who do share fees in accordance with rule 7(1A) should take care that they do not, even inadvertently, enter into an unauthorised partnership with the fee sharer.
8. Solicitors should ensure that there is no conflict between the interests of the client and the interests of the solicitor by virtue of the solicitor's agreement with the fee sharer. Should a fee sharer become a client of the solicitor, the solicitor should be particularly conscious of the need to ensure (as with any client) that conflicts of interests do not arise, and that the wish to avoid offending the fee sharer does not colour the actions taken and advice given in respect of other clients.

Introducing capital or services to a practice

9. Rule 7(1A) allows a solicitor to share fees with a non-solicitor third party, but only in return for the fee sharer third party providing capital and/or services to the solicitor's practice. So the purpose of the rule is to permit capital and/or services to be provided to the solicitor's firm but not to the clients of the solicitor's firm. The rule does not permit the fee sharer to provide services to the solicitor's client as part of the fee sharing agreement with the solicitor.
10. Examples of the kind of arrangements which the rule permits include:
 - (a) A bank may provide a loan to a solicitor's practice in return for a sum, in whole or part, calculated as a percentage of the gross fees of the solicitor's practice. The fact that some clients of the solicitor's practice are also customers of the bank would not, of itself, prevent the bank from becoming a fee sharer with the solicitor.
 - (b) A supplier of information and communications technology may provide computer hardware, software, back-up and training to a solicitor's firm in return for a share of the practice's gross fees.
 - (c) A supplier of an interactive web-based will-writing package may be paid based on a percentage of the fee for each will.

Extent of fee sharing

11. Although the rule does not specify any cap or limit on the amount of fees which a solicitor may share with third parties, solicitors should ensure that the extent of the fees shared does not put at risk the solicitor's duties to act independently and in the clients' best interests. Firms should carry out an assessment of any risk to these core duties that could be created by any fee sharing arrangement, and take action to limit or manage that risk. In assessing whether a firm may have been in breach of these duties, particularly where the percentage of all fees shared is higher than 15 per cent of gross fees, the Law Society may ask for evidence of this risk assessment.

Disclosure to client

12. If a solicitor has a fee sharing relationship with a third party in accordance with rule 7(1A), the solicitor may need to disclose the existence and nature of the fee sharing relationship to any client whose affairs are significantly and directly connected to that fee sharing relationship. Service delivery standards agreed with a fee sharer need not normally be disclosed. See also paragraph 6A of the Solicitors' Costs Information and Client Care Code and below in *Part V Guidance on paragraph 6A of the Costs Information and Client Care Code (disclosure of arrangements with third parties)*.
13. There would, for example, be no obligation to disclose to clients that the practice has a fee sharing relationship with a bank which has supplied a loan to the firm, even to those clients who obtain banking services from that same bank.

Report to the Law Society

14. Rule 7(1A) states that solicitors must, if asked to do so, make available to the Law Society details of any fee sharing agreement.
15. Solicitors may be required to report annually to the Law Society details of any fee sharing agreements including the percentage of gross fees which has been passed to the fee sharer(s) pursuant to an agreement made under rule 7(1A).
16. The Law Society will respect the commercial sensitivity of any information supplied to it.

European cross-border activities

17. In their 'European cross-border activities' solicitors are bound by the CCBE Code, which prohibits fee sharing with non-lawyer fee sharers (see practice rule 16 and overseas practice rule 4). The following therefore remain prohibited by rule:
 - (a) solicitors (wherever practising) sharing fees with a non-lawyer fee sharer situated in an EU state other than the UK, or in Iceland, Liechtenstein, Norway or Switzerland;
 - (b) solicitors practising in an EU state other than the UK, or in Iceland, Liechtenstein, Norway or Switzerland, sharing fees with a non-lawyer fee sharer (wherever situated).
18. There are difficulties in interpreting how this applies to a non-lawyer fee sharer operating in a number of different states, and to a firm of solicitors practising in a number of different states.
19. The Law Society believes that, for example:
 - (a) The prohibition set out in 17(a) above prevents a solicitors' firm sharing fees with a non-lawyer company whose principal place of business is in France, or sharing its fees with a non-lawyer company's branch establishment in France.
 - (b) The prohibition set out in 17(b) above applies to prevent a solicitors' firm with its main office in the UK and a branch office in France sharing a percentage of the whole firm's gross fees with a non-lawyer fee sharer. On the other hand, if the firm shares a percentage of the fees of its English office, or its American office, with a non-lawyer fee sharer, that would not breach the prohibition.

Part III – Guidance on payments for referrals

What is a 'payment for a referral'?

20. Section 2A of the Solicitors' Introduction and Referral Code permits solicitors to pay for referrals subject to conditions. These conditions apply whenever a solicitor makes a payment, or gives other consideration, to a third party who refers clients to the solicitor, unless the solicitor can show that the payment is wholly unconnected with the referral of any client to the solicitor. The conditions also apply regardless as to how the payment (or other consideration) is described. For example, the conditions in section 2A would apply to the payment of administrative or marketing fees, payments described as 'disbursements' which are not proper disbursements, and panel membership fees. Equally, solicitors will not be able to avoid the requirements of section 2A by, for example, making the payment to an intermediary who, in turn, has an arrangement with the introducer. When investigating complaints the Society will consider the substance of any relationship rather than the mere form.
21. 'Other consideration' might include, for example, the provision of services and secondment of staff to the introducer, or an agreement to purchase services or products from the introducer (where such a purchase is a condition of referrals being made).

Disclosure – by solicitors

Where a payment is made to an introducer in relation to each client referred by the introducer, either as a fixed amount or as a proportion of the fee charged to the client, the amount of the payment must be disclosed to each client. Where a solicitor's payment to an introducer is more general in nature (for example, it may be a fixed annual or monthly fee), clients referred by the introducer should be informed that the solicitor is making a payment and of the nature of the financial arrangement (or other consideration given). If the client asks for more information about the overall amount of payments made, solicitors should supply such information as they are able, not mislead the client and be aware of their general fiduciary duties.

22. The solicitor may need to disclose to the client other information, apart from the payment, concerning the nature of the referral agreement. See paragraph 6A of the Solicitors' Costs Information and Client Care Code and the guidance at Part V below.
23. The requirement that the solicitor should make disclosure 'immediately upon receiving the referral' (see section 2A(3)) will normally mean that the solicitor should write to the client as soon as the solicitor is asked to act for the client, rather than waiting until the first interview with the client. If time does not permit this, disclosure should be made at the beginning of the interview and confirmed in writing.

Disclosure – by introducers

24. In addition, the code requires (see section 2A(4)(a)) that solicitors be satisfied that the **introducer** has provided the client with all information relevant to the client concerning the referral **before** the referral takes place. This is so that if the prospective client has concerns about the arrangement he or she can go elsewhere without having wasted any time or money, or feeling obliged to instruct the particular solicitor. If solicitors have doubt that there has been compliance with this requirement, it is suggested that solicitors ask referred clients what information the introducer has provided about the referral arrangement. Solicitors should keep written records of checks made with

clients for evidential purposes. Solicitors will probably need to agree with introducers the nature of the information which the introducer should disclose to each client. Solicitors may also wish to insist that introducers confirm in writing to the client and to the solicitor details of matters they have disclosed.

Publicity

25. Section 2A(4) requires a solicitor to be satisfied that the introducer has not acquired the client as a consequence of marketing, publicity or other activities which if done by a solicitor, would have been in breach of the practice rules (specifically the Solicitors' Publicity Code 2001) – for example through 'cold calling' a member of the general public. Three requirements of the Publicity Code are particularly important for solicitors to bear in mind in the context of payments for referrals:
- (i) the general ban on misleading or inaccurate publicity;
 - (ii) the prohibition on unsolicited visits and telephone calls to a 'member of the public'; and
 - (iii) the requirement that a solicitor must not authorise a third party to publicise the solicitor's practice in a way which would be contrary to the Publicity Code.

Duty to monitor/terminate referral agreements

26. Solicitors are required (see section 2A(2)) to procure undertakings from introducers that they will comply with the Introduction and Referral Code. The undertaking should be recorded in writing, along with the other terms agreed with the introducer. This document should be made available to the Society upon request. Solicitors will be expected to have made suitable enquiries about the way in which an introducer publicises the solicitor's practice. Solicitors who become aware of possible breaches of the Publicity Code or of the Introduction and Referral Code must bring these to the attention of introducers, and if necessary must terminate a referral agreement (see section 2A(5)). A similar approach should be taken where the solicitor becomes aware that the introducer has marketed its own services in a way which breaches the law or any other regulations to which the introducer is subject. The good repute of the solicitor or the solicitors' profession may be put at risk in these circumstances.

Improper constraints

27. Section 2A(4)(c) requires the solicitor to exercise independent professional judgement in respect of advice given to clients. The question of whether an arrangement with an introducer (or any other third party) improperly constrains a solicitor's professional judgement is discussed in detail in notes for guidance on practice rule 1 (basic principles) of the Solicitors' Practice Rules 1990 (see *Part IV below*).

Excepted work

29. Section 2A(6) prohibits a solicitor from making 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. A solicitor would, however, not be prohibited from continuing to act for a referred client if there was a subsequent unanticipated need to obtain legal aid, or to represent the client in criminal proceedings. The solicitor, in this situation, should retain evidence as to how those circumstances had arisen.

'Normal hospitality'

30. What amounts to 'normal hospitality' (see section 2A(7)) will depend on the circumstances in every case. For example, corporate entertainment, dinners or lunches are acceptable and would not amount to payment for a referral, provided these are proportionate to the relationship with a business contact/introducer.

'Normal business expenses'

31. 'Normal business expenses' (see section 2A(7)) are payments for services provided to the solicitor's practice which are totally unrelated to the referral of any client. So, for example, a solicitor would not be prevented from accepting referrals from the company with which the solicitor places his own firm's indemnity or buildings insurance, or from the accountant who prepares the solicitor's annual report or tax return.

Cross-border work in the EU

32. Solicitors are reminded that the CCBE Code prohibits solicitors making payments for referrals with non-lawyers when undertaking cross-border activities in the EU.

Part IV – Guidance on practice rule 1 (basic principles)

Scope of the guidance

33. This part of the guidance deals with issues which may arise when arrangements between solicitors and third parties might constrain the way in which a solicitor handles a client's matter. These may include, for example, a solicitor's arrangements with:
- funders of legal services (including the Legal Service Commission, legal expenses insurers, trade unions and other associations);
 - introducers of work;
 - fee sharers.

Purpose of the guidance

34. Some constraints which might form part of these arrangements would amount to such a fundamental breach of a solicitor's duty to act with independence and in the best interests of the client that they would be clearly improper. However, in many cases a client will, before instructing the solicitor, have agreed, for example, with a funder, to accept various constraints. A solicitor will need to exercise professional judgement to decide whether the constraints imposed in any particular arrangement are proper and, if so, whether disclosure of these constraints should be made to the client. The purpose of this guidance is to assist solicitors with this decision.

The rule

35. Rule 1 states:

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.

Improper constraints

36. Examples of what would amount to improper constraints and which would normally involve a breach of rule 1 would be:
- a requirement that the solicitor does not disclose information to the client to which the client is entitled;
 - a requirement that the solicitor gives advice to the client which the solicitor knows is contrary to the client's best interests or with which the solicitor disagrees; or
 - a requirement that the solicitor acts towards the court in a deceitful manner or lies to a third party.
37. These would be such fundamental breaches of the solicitor's duties that they could not be remedied by disclosure of the constraints to the client.

Constraints which might be proper but require disclosure to the client

38. It is accepted that some third parties have a legitimate interest in the progress of the client's matter and the way it is dealt with. This is often the case with third parties who fund a client's matter, and with insurers. So, for example, it will normally be reasonable:
- for the solicitor to agree not to issue proceedings without the authority of the funder, provided that does not operate against the client's interest;
 - for the funder to require the solicitor to report on the prospects of success;
 - for the funder to impose limits relating to disbursements, or third party service providers or agents.
39. It is acceptable for an introducer to stipulate that the solicitor might only sell one particular insurance policy, for example if there is a conditional fee agreement, provided that it is suitable for the client's needs and the solicitor has informed the client of the constraint.

Constraints which are proper and not requiring disclosure to the client

40. Constraints which a third party might impose in order to secure high standards of service delivery to the client are likely to be proper. The solicitor need not usually disclose these constraints to the client. Such constraints are unlikely to be contrary to the best interests of the client – in fact they are generally to the client's benefit. Examples might be:
- a requirement that the solicitor deals with client enquiries within a specified time;
 - a requirement that the solicitor uses specified computer software or telecommunications systems;

- a requirement that the solicitor uses a particular advertising medium, or particular training provision.

Part V – Guidance on paragraph 6A of the Costs Information and Client Care Code (disclosure of arrangements with third parties)

41. Practice rule 1 and the fiduciary duties owed to clients require solicitors to be independent. Solicitors should be aware that some constraints might impact on this duty and will therefore be improper. Solicitors should use their professional judgement to decide whether any arrangement might affect their ability to act independently for clients. Part IV of the guidance, on practice rule 1, is intended to assist in identifying improper constraints and those which might be proper.
42. Where a constraint is proper, the solicitor must decide whether it needs to be disclosed to the client. A balance is required between telling clients what is material to them, and overloading them with information which is not of concern. However, constraints or conditions such as a requirement to inform a funder of the refusal of a reasonable offer, or constraints relating to the use of particular external services, such as experts or insurance products, should normally be disclosed. If the constraints merely amount to requiring high service delivery standards which are intended to benefit the client (eg, the speed of response to letters or telephone calls), these do not need to be disclosed to the client.

Amended copies of the Solicitors' Practice Rules 1990, the Solicitors' Overseas Practice Rules 1990 and of the codes are available at www.lawsociety.org.uk and from Professional Ethics (tel: 0870 606 2577).